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THE
MAN UNMASKED:

OR, THE
WORLD UNDECEIVED,

Henry IN *Laurens*
THE AUTHOR OF A LATE PAMPHLET,

INTITLED,
"EXTRACTS FROM THE PROCEEDINGS OF THE
"HIGH COURT OF VICE-ADMIRALTY
"IN CHARLESTOWN, SOUTH-CAROLINA," &c.

WITH
SUITABLE REMARKS
ON THAT MASTERLY PERFORMANCE.

By EGERTON LEIGH.

INFANDUM CAPUT! - - - - -
- - - - - HIC VIR! HIC EST! VIRGIL.


THE MOTIONS OF HIS SPIRIT ARE DULL AS NIGHT,
AND HIS AFFECTIONS DARK AS EREBUS.
LET NO SUCH MAN BE TRUSTED.

SHAKESP.
O WHAT MEN DARE DO! WHAT MEN MAY DO!
WHAT MEN DAILY DO! NOT KNOWING WHAT THEY DO!
SHAKESP.

CHARLES-TOWN:
PRINTED BY PETER TIMOTHY, M,DCC,LXIX.

T H E

Man unmasked, &c.

 *HERE is a tide in the affairs of men,* and I have frequently observed, that some precise period of our lives, is commonly distinguished, with peculiar disappointment. This reflection comes home to my present situation; but, like a faithful centinel on a watch-tower, it serves as a summons to the man, to collect all his scattered powers for self-preservation and defence: however, it is by no means a pleasing or convenient circumstance, to meet with interruption in the course of a steady and uniform pursuit, and therefore I may well be allowed to denominate *that* a disappointment, which intrudes upon the business of life, by pressing me into a kind of foreign service much against my will.

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The author of a late publication, intituled, " extracts from the proceedings of the high court of vice-admiralty in Charles-town, South-Carolina, " obliges me, by a sort of necessity which cannot be resisted, to take up the pen in defence of an injured reputation. This is a hard and cruel case : to be stigmatized in print, and either to remain silent, in which event the world will take every charge *pro confesso*, or (bitter alternative!) to set myself up as a candidate for literary fame, perhaps without ability, taste, or inclination. In the hey-day of the blood, when passion is apt to get the start of judgment, when a young man is entering upon the stage of life full stored with classic lore, to become an author, is then, amongst the class of youths, an epidemical ambition : but when that fire and vivacity have suffered some allay, by a close and unwearied attention to the study and practice of the law ; when public employments have for many years engaged no scanty portion of regard ; it is an arduous task indeed, to break loose from such fetters, to disengage the mind from operations which time has made in some degree mechanical, and to proceed in a new and opposite direction. The reader must therefore expect very little ornament of stile, he must be satisfied with a plain and manly vindication ; instead of sallies of wit and flowers of rhetoric, he must content himself

himself with a sober narrative; and if a gleam of fancy chances to break forth, let him rather impute it to the anguish of my wounds, than to brilliancy of parts: but in return for this concession, it is hoped he will read my paper with some good nature, and make allowances for numberless defects, as I am no presumptuous *volunteer* on this occasion; a request perhaps the more just and reasonable, as every man knows, that the extended situation of my affairs, both in a public and private view, will not allow me sufficient leisure for an elegant or elaborate performance, were my abilities even equal to the importance of the task.—One circumstance at least affords me a ray of comfort, on this trying occasion, that as my adversary's imagination is dull and languid, so is his skill as weak, as the cause he is engaged in.—How much do I deplore the rashness of the man! who, like an inconsiderate and wicked suicide, stabs his own reputation, by an instrument which providence never meant him to make use of, but in the sober and innocent routine of commercial duties.

In the course of these observations, it shall be my endeavour to avoid all gross and impertinent detraction; and whatever censure or severity may fall upon the author of the extracts, must be imputed, partly to his fluctuating conduct, and partly to his notable

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ble performance, which affords me an ample and spacious field to sport and range in. I shall studiously observe the strictest laws of friendship: not one allusion shall tend to violate that law; neither is it my intention to point out private foibles or defects; my aim being solely directed against the errors and affectations of the man in public life, in which view he is equally subject to observation with myself, and if such reflections did not become absolutely necessary, in defence of my own character, I would by no means make them, for the task is truly painful to me: it is my wish to treat him as he merits, and to repay him with pure and unadulterated coin.

It is not an easy matter to account precisely for his conduct, or to assign a good and substantial reason wherefore, towards the evening of his days, he should offer himself to the world, as a candidate for literary fame; though I shrewdly suspect, that a certain pride of disposition, a full-blown opinion of himself, and a persuasion that he is equal to any undertaking, have lured him, as the bait decoys fish, into an element destructive and repugnant to his nature.

Whatever may have been the motive to the performance, is an enquiry which will naturally be made in the course of these reflections, and therefore I shall, in this place, employ a few moments to consider the folly
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of those men, who unwarily buoy themselves up with flattering ideas of their own parts and understanding, of their ability to undertake, and their capacity to perform, things far beyond their reach.

I have known a man of plodding parts and tolerable sense, with a sufficient store of commercial knowledge, improved by experience in an extensive plan of trade, well nigh ruined, through a mistake of his natural and acquired endowments. The person I allude to, was many years ago a sober arbitrator amongst merchants, in little differences of accounts and reckonings; he was well enough skilled in the rate of exchange of different countries, and in the price of commodities; the law of bills of exchange and insurances were likewise subjects which naturally fell within his province; and in short, he figured as a man well versed in the traffic of the world. In this career of policy he was equal and consistent with himself: but the unhappy situation of his country, at a critical conjuncture, unluckily induced him to assume the military garb: the principle was good enough, if it had been well bottomed: but the mischief was, that he believed himself to be a soldier, without the education or spirit of a soldier: in this one fatal circumstance, he beheld himself wretched to a degree. Had he reflected for a moment, that a red or a blue coat, *mustaches*,
suitable

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suitable attire, and warlike badges, are poor emblems of the god of war, without the æthereal spirit of a god, I am certain that he would have continued at the counter, reckoning, with poring attention, the intricate concerns of pounds, shillings, and pence:

What followed this change of situation? This mistaken and deluded man soon found, to his mortification, that military attire, his sword, his buckler, and his gun, were made for use, as well as shew; and when the day of trial came, when ornaments were badges of utility, and the man who wore them, should have signalized his courage, by his ardour, in his country's cause, he found himself a mere *marker* and *shipper* of *Rice*, a *weigher*, a *broker*, a *merchant*, or *prudent consignee*: not but there are, and, in the affair alluded to, were, men of high and superior merit, whom we may except, from this general imputation. And there is a man, who proves in his own life, the letter of this doctrine; and if his soul can withdraw itself for a moment, and reflect on past events, from a *Retrospect* of a *different Case*, than what has lately engaged his *whole attention*, he must sink into despair, that he is now labouring to regain that *Popularity*, which some years since he lost, at a time too, when he ought to have secured it as a rock of defence, and by a valiant use of those
weapons,

weapons, by which he had it in his power effectually to secure it. I shall not examine what was the particular amount of his loss, in point of reputation, but leave it to the world to discover, if they can, what advances he then made in his new pursuit after glory and renown: one loss however, all men remember, as a proverb uttered by their fathers, that he sunk into the merchant, unbeloved by the *People*, and *neglected* by his friends.

There is little reason to expect, that a better fate will attend the man who adventures, at a late time of life too, into researches which puzzle and perplex the most eminent professors of the law. A merchant transformed into a soldier, makes the same ridiculous figure in the study of jurisprudence. Such a change may be compared to some of those wild and imaginary metamorphoses which Ovid, in his poetical flights, entertains us with; and if the Extract-Author has an English translation of the works of that fanciful poet in his desk, he may probably meet with some *Monster* like himself: for we may assure ourselves, that every departure, from the regular system to which we are bred, every deviation from that track which nature or our parents chose for us, and long practice and experience have reconciled us to, will only involve us in a la-
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byrinth,

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byrinth, where, like silly fools, we must perish in a perplexity of inextricable mazes, without the aid of any clue to bring us out again. So easy is the transition into the road of error ! and so arduous the task to escape from its alluring toils !

But to proceed on the learned work wrote and distributed by *Colonel* Henry Laurens.

It is, in truth, a modern rarity, a farrago of extracts, some facts, some untruths, suspicions, reflections and conjectures, bundled together in a confused and motley heap, calculated to inflame the minds of the people, to cast undeserved odium and contempt on courts of admiralty in general, and on my conduct in particular ; in open violation of the law divine and human, and in direct opposition to the dictates of natural affection. The author's design is not more low than it is ungenerous, disingenuous and base : it is to separate and divide a house against itself ; to create family disquiet ; and to ruin, if possible, that man, who has, at all times, endeavoured to convince him of his friendship and regard. The manner in which the poison is conveyed, may quiet and lull men's senses for a time, and the author may enjoy a fleeting and temporary glory ; but happily this approbation must, by great and candid minds, be speedily withdrawn, when some dextrous

dextrous enquirer touches the performance, as *Ithuriel* did the *toad* in Milton, when instantly the *fallacy's unmasked*, and the *deceiver* appears in his natural shape and colouring.

Some may be led to ask, for what reason, I vouchsafe to give the man an answer; since the attack is in defiance of law and the most obvious principles of our blessed constitution? the objection has its weight. My first opinion was, to treat it with contempt: but as slander, circulated with a diligence hardly to be paralleled, may wound my reputation in distant parts, and even here raise suspicions, of a character which has heretofore weathered the most active storms, it may be proper to condescend, in some degree, to the common reasoning and apprehensions of mankind, and the rather, as I no longer fill that station, to which the attack more immediately refers.

The meanest capacity may easily perceive, that it is altogether out of rule, for a judge to discuss at large the grounds and principles of his judgments, or to submit to an appeal to the people on the merit of cases which have undergone a judicial determination: the objection is flat, it is unanswerable, it is conclusive. My readers therefore, can only expect me to touch upon such principal parts of the remarks, as tend to vilify my reputation and good name. To argue law
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with Mr. Laurens, would be like a physician disputing with a quack, or like a man of the noble art of defence setting himself up against an ignorant pretender, who, being destitute of skill, may, like a madman in good luck, avoid the regular and more accurate displays of science; and what has the man of science to gain by such a conflict? a victory confers no honour, when strength or superior knowledge contend against impotence and weakness.

The King, as the fountain of justice, distributes the same through various channels, for the benefit of his faithful subjects; and if, through the weakness, incapacity, or corruption of his judges, the streams are interrupted in their course, they have, in numberless cases, other tribunals to resort to; and therefore every sentence subject to a review is, in estimation of law, of full force and validity, 'till the same is annulled or reversed by the next superior judge. Both contending parties seldom go satisfied out of any court, and consequently each disappointed person, has only to determine with himself, whether he will sit down with the sentence of his judge. Nothing can be more idle and absurd, than for a party in a cause, to fly in the face of that judge, whom he has so lately and so humbly implored for relief; to desert his constitutional remedy, and to set himself up as a *Lord Paramount* to arraign his
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justice, load him with reproaches, vilify his name, and blast, in the most odious terms, his reputation, integrity and honour; to try him too by his own unlettered judgment, without colour of law, against law, in defiance of the King's authority, in exclusion of a superior jurisdiction clothed by the law of the land, with full and ample powers to reform his errors and to administer relief; are acts of the most consummate impudence and folly: they are bold attempts against the laws and constitution of our country; they are base affronts to Majesty itself, from whom both justice and honour flow in liberal and abundant streams; and they are gross and daring insults on society, as they naturally tend to loosen the band of civil union and connexion. Establish it once as a principle, that the man who loses his cause, or is (as he may think) only partially relieved, may cast upon his judge in the first instance what obloquy he pleases, and it is then equally just, regular and lawful, to libel every judge through every stage; and the dernier resort shall, in the end, enjoy all those accumulated censures, which malice and revenge had before divided amongst the subordinate judges of the cause.

In vain would the legislature enact laws, if the judges were controuled, by the people, in their construction of them. Perhaps some may be apt to say, shall judges have an unlimited

limited power to do as they see fit? shall every order of men be accountable, and these remain undisturbed in the enjoyment of their seats? By no means. Bring that man to justice, who tampers with her sacred laws; proceed against him with unrelenting vigour and the most active perseverance; let him suffer by law, for his abuse of law: but then, let the attack be directed against the errors of his will, the false bias of his mind, the corrupt practices of his heart, and distinguish between those possible injuries which may arise from the fallibility of human judgment, and those which result from artifice, combination, and design.

Many eminent and illustrious persons, have lived to hear a reversal of their own decrees; and that man's judgment may well be questioned, who vainly presumes or arrogantly confides in it.

If a disappointed party artfully represents his case, and forms a libel on his judge's character or conduct, the honour of that station must sink, in proportion as such attempts meet with countenance and regard; and though a judge may pursue his legal remedy, it is but a poor consolation, since the multiplication of suits must subject him to so many reiterated attacks, to the disquiet of himself, and the community wherein he lives: but a legal defence is not adequate to the necessity of the present case; if the party

ty was punished in the due course and order of law, still a poison has been spread, which that remedy cannot reach.

The law of God forbids calumniation, and the Roman law ranked the offence of slander under the head of capital crimes. And Cicero, in one of his orations, gives a hint about printing the letter K on the forehead of a man, whereby they expressed *Calumniator*, a word which the Romans spelt with a K, which letter was burnt with an iron into the foreheads of those who were convicted of calumny, which brand incapacitated any person from ever acting as a prosecutor in a court of justice.

Our own law is likewise severe to persons who so offend : and if the slander is directed against the sacred character of a man in judgment, acting under the sanction of an oath, and representing, in a certain degree, even the deity himself, in one branch of his great office, the judgments have been exemplary and woefully severe. In this place I cannot forbear to give my readers a case [*See Appendix No. 1.*] * reported in our books, as it bears so strong a resemblance, to the circumstances which particularly distinguish the book of extracts and remarks.

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* *The reader is desired to turn to the APPENDIX in course, as he comes to the references, before he proceeds in the argument which is grounded thereon.*

The similitude is striking. For it appears, that *Wrennum* traduced *Lord Chancellor Bacon* (our author's great favourite; and to whom he is indebted for one of his title-page quotations) calling his lordship's decree *unjust*; that he made a *book* of all the *proceedings* in the cause; and that he *railed* against the *judge*, and his *sentence*, *through his whole book*, with the most *desperate boldness* and *despiteful and virulent words* that were possible. The party was punished according to his demerit: and this doctrine was established, that under colour even of a complaint formally exhibited to the proper tribunal for redress, it is not lawful to rail upon the judge or his sentence, and to make himself a judge in his own cause, by prejudging it before the *rehearing*: and it was also resolved, that the *justice of the decree* was not to be *questioned* in this case, for that was not the *point then examinable*.

No court of justice will take cognizance of any matter *per saltum*. And therefore, in the case of † *Magoons* and *Premanee* against *Dumaresque*, depending in the royal court of Jersey, on a seizure of a ship and goods, on account of an unlawful importation there, the court, without making any determination, referred the difficulty to his Majesty in council, praying that he would determine the case: but the lords of council
were

† Lord Raymond, 1448.

were of opinion, that the court of Jerſey could not tranſmit the cauſe to his Maſteſty for difficulty, but ought to have determined the right of ſeiſure one way or other, and the royal court of Jerſey was accordingly directed to proceed to give judgment in the cauſe.

It appears then, that a ſuperior court will decline to receive a caſe undetermined upon, though the judge impliedly ſignified, that the difficulty was too great for his ſkill and knowledge, and when, after ſuch a declaration, the lords of council could entertain very ſlender hopes that the judgment would be accurate; yet, to preſerve the order of the law, and to avoid giving offence to ſettled and eſtabliſhed principles, they required ſome judgment to be given, that his Maſteſty might be in due time conſtitutionally poſſeſſed of the cauſe, upon a regular tranſmiſſion of the proceedings by way of appeal.

In what light then muſt Mr. Laurens's conduct appear, as revealed by his late publication? Out of the ſix ſeveral informations which he has taken ſo much pains to celebrate, he was only intereſted in the three following, the *Wambaw*, *Broughton-Iſland Packet*, and the *Ship Ann*. The two laſt veſſels were reſtored. The former only was condemned; and from this ſentence he preferred an appeal to the high court of admiralty of England, and every neceſſary order

was made by the court to enable him to prosecute the same with due effect. It appears [*See App. No. 2*] that he used no diligence, gave no positive directions to the register of the court to furnish him with copies of the proceedings, until the 9th day of July last; a lapse of ten months from the 14th of September 1767, the day on which he interposed his said appeal. It is true, that he applied for a further time, when the ship *Ann* was the subject of dispute: but manifest neglect appearing to the court, on the appellant's part, and a shameful desertion of his suit, the judge, for that reason, and another equally strong in point of law, rejected the prayer of his petition; but rejected the same only, after mature deliberation at his own chambers, to save the party the cost of another court, and indeed every other charge attending his application. It is therefore amazing, that he should so boldly assert, page 5, that the judge. "*never gave any* [*See App. No. 3.*] *answer to his said petition.*"

From this short, but true state of a few facts, this gentleman's conduct must appear, to every impartial man, wild, inconsistent, irregular and strange. He first prefers an appeal to the proper jurisdiction; he abandons the same, 'till it is too late to obtain a writ of inhibition from the court *ad quem*; he renews his original conceit, and applies
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for further time to the court *à quo*, upon a reason sufficient of itself to work a disappointment, *his own default*; and failing in his application, he takes up the pen, and draws a formal and solemn appeal to all mankind. Will the boldest friend of liberty contend for the justice of such a procedure? Will he not rather inveigh against it, as a desperate attempt to undermine the principles of our happy constitution; as the ready and effectual means to introduce disorder and confusion in the state; and as a measure big with alarming danger? We live in happy times surely, when a party may, with impunity, fly in the face of a law maxim, judge in his own case; and, because he persuades himself, that his judge is designedly or wilfully mistaken, may still soar above all law, and, in defiance thereof, usurp the seat of judgment, and inflict his own punishment upon the man cloathed with authority of law, and whose judgment was directed and governed by *an oath*, most solemn in its nature.

Having, I think, sufficiently exposed the author upon general principles, for so daring and presumptuous an attack, and so flagrant a violation of law: I shall proceed now, to shew the tendency of his work in another point of view; a work which will serve, perhaps, as the only true standard by which the character of the author, as a man, may be

be indisputably fixed. We see so many persons in common life *halting*, *wavering* and *vibrating* between different opinions, with a mixture of so much *goodness* and so much *baseness*, and in general with such a compound of opposite *qualities*, *humours* and *inclinations*, that we are, all our lives long, at a loss to determine, with precision, what is such a man's predominant and ruling principle of action: sometimes indeed it happens, that such impostors are detected, thanks to the good providence of God; for the public always benefit by the discovery of *Cheats*.

Mr. Laurens has published his book against the advice of his friends in general, and his own lawyers have told him that it is a libel: no man who reads it can say the contrary. If it is a libel, it is against law: for, as my lord Coke observes, * “ in a
 “ settled state of government, the party
 “ grieved ought to complain, for every in-
 “ jury done him, in an ordinary course of
 “ law, and not by any means to *revenge*
 “ himself, either by the odious course of
 “ *libelling* or otherwise. ” To shew that libelling has no warrant in sacred writ, would be an idle and a fruitless labour, every man, it is hoped, being possessed of that evidence which supports the proposition.

The publication then was promoted solely,

* 5 COKE, 125.

ly, by the *religious* Mr. Laurens, in defiance of all law, divine and human; in opposition to the advice of friends, and against the conviction of his own heart, being told, by men of the profession, that his book is a *libel*; circumstances which must heighten the offence, and render the man as *odious* as his *work*.—The reader will no doubt be surprized, when he is informed, that the publisher or compiler of the book under consideration is, my *wife's own uncle*; and that a most intimate friendship has subsisted for twelve years past, which nothing has materially interrupted, but these affairs, which lately depended in judgment before me, as judge of his Majesty's court of vice-admiralty.

I have now resided in this province more than fifteen years, and my reputation has hitherto supported itself against every attack; and I may safely aver, that it stands upon a foundation which can never be removed, unless *indirect methods* shall be taken to affect it. The *Remarker's* dirt scatters as it flies, and the only *man* who bears its impression, is the *man* who throws it. However, it is certainly a matter of no small concern, that a relation, one whom I ever thought my friend, should endeavour to plunder me of my good name (a jewel of inestimable price) a jewel which I may have starved myself to purchase, as an excellent writer observes; and

and to rob me, at the same time, of my happiness and peace of mind ; neither is it a thing of light or trivial moment, that a man, yielding to his passions, shall thus *implacably* pursue every method in his power, to ruin, if possible, a numerous family of innocent dependants ; to bring a fair character into unmerited reproach ; and to load me with infamy and disgrace. If the attempt proceeds from a principle of virtue, 'tis surely of the brutal kind : it is not that virtue which our religion teaches ; it is not the virtue which human nature dictates : it is rather the evil workings of a *cruel* and *malignant heart*.

I may venture to affirm, that society receives a wound by this dangerous example. The ties of kindred are broken and disjoined ; a wall of partition is erected, to divide the members of one and the same house ; and a foundation is laid perhaps for *future feuds* and family commotions. In my own time, I will use my best endeavours, that no such evils shall subsist.

Let us now examine, how far this step is agreeable to the outward professions of the man, as a member of the Christian church. His grand aim, for many years, seems to have been directed to a pious and religious end ; his *formal cast, plain attire, demure aspect* and *clouded brow*, have ever denoted his severity of manners, with sometimes an *uplifting*, and now and then a *downcast eye* (as
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the utterance of the priest, or some strong words, seeming to captivate his heart, have excited his *pliant opticks*) these have long been the outward and visible signs of what he, no doubt, is pleased to stile his inward and spiritual grace: then again, his repeated acts of charity and good-will; his baskets of bread distributed to the needy, and a *fly dollar* dropt into a poor man's hand, with an *emphatic look*, that those who are on the way-side might know the *secret* of the *matter*: then his table, full and amply spread to every *Skipper* in the trade; and his *worthy self*, after an early whirl at the dawn of day, sitting at home in all the pomp of *oracular importance*, ready to advise *raw beginners* in the *mysteries of trade*: also his easy freedom of access, together with his generous offers of relief and assistance, like old *Mirabel* in the play, who says, he ever likes to be generous to those who *do not stand in need*: and in short, his pressing readiness to be a first-rate man in *subscriptions* of a public nature: all these, and a thousand such like excellencies, have long distinguished him as an object of attention. When the world hear all these *winning stories* in his favour, and read his present work, they must necessarily be struck with astonishment, and wonder that he should publish a flat and open contradiction to the *tenets, practice, and maxims* of his life; some no doubt will say, that

that the judge must be the man he so zealously labours to represent him; that the *valuable author* rising above natural affection, and the ordinary attainments of other men, chooses to sacrifice every thing to his *high-seasoned* and *quick-relished* love of justice; and in consequence of these conclusions, the *poor judge* receives no quarter, and deserves no mercy. *Practice* speaks one language, *his book* another. I must therefore fix some standard, by which the world may be the better enabled to reconcile the *one* to the *other*.

When I read any story, whether in sacred or profane history, whereby I am led to wonder that man can be so brutal, and act so contrary to the end and design of his formation, I instantly conclude, that these friendly instincts and propensities of our nature have been borne down by irregular passions, or worldly and sinister attachments; and, in order to form a right judgment of the character, I proceed to sift out the first ruling principle of the man; and then, according to Mr. *Sterne's arithmetic*, I carry in my eye his leading passion, which I separate from the other parts of his character, and then observe how far his other qualities, good and bad, are brought to serve and support *that*; for it is certainly a most fallacious way of judging of *complex* and *doubtful* characters, to sum up all together, and deduct,

we do in vulgar arithmetic, the lesser from the greater, and so give credit for the balance.

Scripture seldom dwells long upon the characters of *bad* men; I must therefore be indebted to an historian; for some particulars in the life of *Herod*, which are also well stated by the *facetious Mr. Sterne*: The first passion of *Herod* was, an immoderate thirst for, as well as *jealousy* of power, every action of his life was devoted to that end: he had the *face of religion*, because he built temples in Judea; but it never *sunk* into his *heart*, because his motive was, to gain a name of *popularity* in the court of Augustus: he was *jealous* and *suspicious* of all mankind; shew me an ambitious or *revengeful* man that is not so, for as such a man's hand, like *Ish-mael's*, is against every man, so he concludes that every man's hand in course is against *his*: he was cruel, for he put the whole *sannadrim* to the sword, sparing neither age, or wisdom, or merit: he cut off his *two sons*, by a public execution; and all this not because he was *cruel*, but, that his jealousy dreaded a rivalship which might check his *power*. Now, this very *bad man*, we can scarce suppose to have been possessed of *any virtues*: Mark the mystery; the same thing happens every day, in a less and more contracted sphere: he was courteous and pleasing to a degree, in his address; he was *popular too*, and a prince of a man in his ex-

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pences:

pences: he knew the world, and how to gain the applause of it; and, in truth, he so managed matters, by these last mentioned *graces*, that he stood his ground *maugrè* all the opposition which his vices made him subject to: his *address*, magnificence and *shew of generosity*, absolutely gained him the affection of the Roman senate, as well as of Augustus, and that too in spite of all his vices. From this short view of his history, we may all derive a plain and instructive lesson, that it is not the *parade* of a few *seemingly glittering virtues*, which fix the real character of any man, when the same being duly analyzed, it manifestly appears, that they are merely subservient to the gratification of a *ruling passion*.

I seldom judge living characters, but for my own government in life, and therefore I might leave mankind to form what opinions they please concerning the predominant affections of our compiler and remarker; but as he has spared no pains to blacken my character, in the most tender point of view, he has no reason to expect any favour at my hands. He thirsts then, in my poor opinion, after the phantom *Popularity*, and so he gains it, 'tis no matter by what means: he thinks, perhaps, that having once enjoyed it for a time, he has a natural claim to it again, and the rather, as the *public favour* has, for some years past, taken a *little excursion*

curſion out of town. When his merit can claim it, as a right, I will be one of the firſt to hand the *Idol* to him; but, according to his preſent temper and complexion, I can on no ſcore ſerve him as a *Jacob's ladder*, to raiſe him to the point of his ambition. In my apprehenſion, he is doomed to riſe no more; and without inſpiration, I will be bold to foretell, that as his *paſſions* have out-run his *policy*, ſo *both* together will keep him in *eclipse*. The fruitful brat, the image of its father, is now in the world; let us therefore keep a ſteady eye to the principles already laid down, and ſee whether we can explore the reaſons of this late ſtrange and offenſive publication. Every man who reads his book, muſt perceive the motive. It is an attempt of the author, under the ſpecious ſhew of an *exalted kind of virtue*, which regards no law, no friendſhip, no alliances, no ties of blood, to gain a *popular name*; to effect which, like Herod, who ſacrificed, in fact and deed, his two ſons, the Bethlemiſh children, and the Jewish ſanadrim, ſo *he*, on his part, with a *brutal fury*, ſacrifices, in print, the fame of a man in the meridian of his days, on whoſe integrity, aſſiduity and ability depend, the ſubſiſtance of his *own* affectionate *niece*, her ſeven blooming, yea promiſing children, a virtuous ſiſter, and a moſt valuable mother, whoſe
grey

28 THE MAN UNMASKED, &c.

grey hairs he has taken uncommon pains to bring down *with sorrow* to the grave.

The author must have reasoned in his mind, I should suppose, in the following manner: “ *I have long been overlooked; the smiles of the people are bestowed elsewhere: how shall I regain them? A glorious occasion presents itself to me. The times are much distracted in his Majesty’s American dominions; the laws of revenue and trade disquiet my fellow-subjects; courts of admiralty become obnoxious to the people; I myself have felt some evil from them; and therefore, I may well enough pretend to take offence at some decrees; the surmise will gain credit, from the circumstance of my alliance with the judge: not a man can suppose, that I would expose him for a trifle: then the disinterested cast which a proceeding like this will have, must gain me much applause; besides, all the men in trade will, of course, be attached to me: and, in my own way, to take so capital a lead, must multiply my friends through America in general, and the whole circle of our mercantile connexions. Transporting thought! Imagination, with expanded wings, seems to give me possession of the jewel, before my time! I must, I will, stand forth as a mighty champion in the cause.* ”

The reader may naturally express some surprize. It becomes me therefore, to give him

him all the satisfaction in my power, by assuring him, that the late publication is a piece of *absolute Hypocrisy*, as acutely concealed, and artfully contrived, as the world has seen for many a day.

If Mr. Laurens entertained so deep a sense as he expresses in his book, of the judge's ill-demeanour towards him, wherefore did he continue his accustomed friendship, and converse with him in all the freedom of epistolary writing? Every one of the informations, except that in the case of the *ship Ann*, were out of court, as being finally determined upon by the judge, on or before the first day of September 1767: let my readers account, if they can, for these letters [See App. No. 4, 5, 6, 7, 8, 9, 10, 11, 12.] whose dates are continued up to the *seventeenth day of April, seventeen hundred and sixty-eight*: They furnish their own comment, and that too in such legible and plain characters, that to enlarge on them, would be to suspect the discernment of my readers. It may not be amiss, however, barely to remark, that most of the following particulars are, beyond a doubt, established by the letters: that *subsequent* to the determination of the several informations (the ship Ann excepted) I have received fees in my profession, from, and through the recommendation of, this *seemingly enraged*, and as he labours to make the world believe, much injured person: that he has frequently
afforded

me his advice, in my private concerns; heard patiently my complaints on particular subjects; been ready to stand up in the commons house of assembly as a champion in my cause, in case of any attack from that quarter: and, to close this little detail of his *mysterious conduct*, one of his letters makes *honourable mention* of me, in a certain particular, in my late admiralty station. After such a strange and complex conduct, we are not to wonder that Mr. Laurens, in the 7th page of his motley performance, *modestly declares*, that no man presumes to impute to the judge either *sickleness* or *duplicity*: for my part, I entertain such favourable thoughts of mankind in general, and in particular of those persons who are acquainted with us both, that I am persuaded, no temptation will induce them to rob *him* of his *natural claim*, and almost *exclusive right* to *both*.

The sense of an injury is commonly keenest when the wound is first received; and consequently, if our remarker had been led to move, in this case, upon a *public principle* (as no doubt he earnestly wishes to *dupe* the world into a full belief of) he should have been consistent, by *withdrawing* his friendship and regard, when the cause of his complaint arose; but to continue *both*, with so much warmth of sentiment and expression, for eight or nine long months, proves, to a demonstration, one or other of these things,
either

either a *slackness of zeal*, if he had then conceived such ill impressions of the judge, accompanied with a *thorough-paced Hypocrisy*; or, that he felt no *early sense* of injury, and therefore, to gratify his *private spleen*, he now attempts to arraign the justice of his judge, in contradiction to himself. A candid reader will rather take offence, than suffer himself to be captivated with such daring language, as the publisher of extracts uses in his introduction, when speaking of “ships
“and cargoes being boldly seized, and vio-
“lently prosecuted, and either condemned as
“forfeited, or *partially and incompletely* re-
“stored, without even the *smallest legal pre-*
“*tence* for seizure.” This gentleman’s *pre-*
sumption gets the start of his *understanding*; and he cannot be ignorant, that such insinuations, from a party in a cause, can have no weight against the solemn judgments of a court. Men of sense will see, with half an eye, that assertions like these, are the effusions of disappointment, the mere overflowings of an *inflamed heart*, and the *raptures* of *malice* and *ill-will*.

The same *little volunteer* and *drawcansir* in the arts of scandal, submits his “remarks,
“reasonings and conclusions to those, who
“from an extensive knowledge of trade
“and commerce, free from the *despotism* of
“*petty office*, or the *bias of plurality of places*,
“are capable of truly judging whereon the
“wealth

“wealth and power of Great-Britain and her colonies depend.” I do not mean to set forth the importance of my employments, with an ostentatious view; but it is proper, that every part of this writer’s ignorance should be laid open to the world. It is not sufficient to attack the judge, but he must endeavour to lessen and degrade the dignity and honour of the King’s employments, and by an unpardonable sneer too, as if Majesty was to be controuled in the measure of bestowing his royal favours.

The subject has an undoubted right of action, against the man who shall decry the charters or titles of his inheritance: but it is a light matter, with this respectable author, to trample under foot some of the first offices of government, thereby insulting the King who bestows them, and the laws which give them a *constitutional* sanction and support.

In every country, the King’s attorney-general is considered as an officer of considerable weight. His phrases therefore, of *petty office*, are grossly misapplied; and part of the *terms* returns upon the author, as a *privilege* peculiarly annexed to his *own dear person*.

In the 2d and 28th pages of Mr. Laurens’s *libel* (for when we speak of the admiralty, the term is perfectly familiar) he mentions the holding of *ten courts*, and *two guineas* per court being paid to the judge thereof. In
order

order to remove the least suspicion of my avarice or rapaciousness, I beg leave to refer myself to the following papers [See *App. No. 9, 10, 13, 14.*] from a view whereof it will manifestly appear, that no *mercenary motives* have at any time influenced my conduct, at least in that *particular department*. These papers shew the judge's attention to dispatch, and they likewise establish this *plain fact*, that no fees have been charged contrary to custom, and that the judge, instead of increasing, had in truth in some instances reduced them.

The *pure* Mr. Laurens, page 4th, alludes to the two dromios, but artfully drops the judge's allusion; who particularly observed, on that occasion, that, as both cases were nearly at issue at the same time, he should consider and decree on both together: for he could never intimate, that the same fate would happen to both: and if any loose expressions gave room for any other conclusion, he can with the utmost truth declare, it was foreign to his meaning; and he must either have expressed himself incorrectly, or been grossly misunderstood by those who heard him. However, as it is no uncommon thing for our author to *throw double*, the fancy of *twins* was a circumstance worthy observation; and I agree with *Tristram*, that a man ought to enjoy his hobby-horse; and if he steers clear of me, he may ride post on

it if he pleases, I shall give him no kind of interruption.

I have shortly hinted at the pretence which Mr. Laurens sets us, page 5th, concerning his appeal; and that having made an application for further time, the judge omitted to give any answer thereto, and having *surrendered* his commission, that he is now no longer judge of the admiralty-court.

That my readers may be undeceived on these points, I beg leave again to refer them to the following papers [*See App. No. 2, 3.*] by which it appears, that Mr. Laurens never seriously intended to prosecute his said appeal; and that the judge did positively answer his said petition on the 4th day of August last; a fact which the records of the court can establish with legal certainty.

When men are determined to transgress all bounds of decency and true decorum, it is no great matter of surprize, that our author, overleaping *all limits*, should worm himself into any corner, for the sake of gathering dirt. And though Mr. Moore is said to have reported what is stated in page 6th, I can by no means suppose, that it was owing to that *heroic attack* which our *muscular* and *sanguine* remarker made upon the *nose* of the *collector*: a great disparity of years, and bodily infirmity, compared with the compact texture of our author, should have made him desist from so rash and un-

ungenerous an act; besides, he was returning from court, where he attended to hear the decision of the judge, and no indignation at his conduct could justify so unmanly an attack. The law annexes a privilege to certain persons, who are free, in common cases at least, from arrest or imprisonment *eundo et redeundo*, and in justice they ought to be protected from insult and abuse: but this champion should, at any rate, have withheld his resentment a few moments, because the collector's place of residence was contiguous to a spot better suited for *hostile purposes*, as being less exposed to the interruption of passengers. In every sense, the deed was *shameful* to the last degree, especially, when we reflect that it was performed in the presence of a hundred people, most of whom *perhaps* were much inflamed at the collector's conduct and proceedings.

The fact was, from the best information I have ever been able to collect, as follows: that, upon the rising of the court, some little altercation passed between Mr. Moore and Mr. Laurens, which occasioned a *gathering* of the people, when the latter gentleman put his left arm across the *poor collector*, in which position he walked along with him for several paces, declaring, that no person should *hurt a hair of his head*; and under this appearance of protection he might be said to have betrayed him with a *kiss*, for he *instantly*

ly uttered "*by your leave*," in the phrase and manner of a London porter, and then with his *right hand* pulled the gentleman by the nose; a gentleman, with all his faults, greatly his superior, and one whose station, as well as years, would, with a *valiant man*, have secured him both protection and support. The age of sixty exempts every one from bearing a part in the toils and hazards of war, and also from many civil duties, and it is hard, that a private difference should demand that *exertion*, which the public does not exact in behalf of the community itself. Observe how well this business was managed: one man's left arm across another man's left shoulder, is indeed like killing two birds with one *stone*, for such an attitude forms a kind of *fence* or *inclosure* round the person, whose right hand hanging by, and being deprived of any play or action by its contiguity with the other's side, and the left hand when across being admirably adapted, by its motion, for various little useful operations, and the fingers supplying the place of little *bandages* to the left arm of the person under this curious *convoy*, brings this aged and deluded man into the best situation that was possible to devise for the *subsequent* act: now form two such images in your mind, and then, reader, prepare yourself for the *onset*, but you must look as *intently* as you would to discover the *slight of hand* of a well bred conjurer.

conjurer, up *sho ts* the right hand of the man whose left is across the other's shoulder, and seizes the *nose* of the collector, in that farcical position, which he had been for some little time before preparing to *encounter*, by settling certain preliminary points, which he the better effected by wheedling, and as it were fascinating him by his charms, and offers of protection against the rage and fury of the people. This is such a master-stroke of *political deceit*, as merits a place in *Macbiavel* himself.

How much reason has the province then to lament, that this man's courage was exerted *only* when it was not wanted; and how contemptible must he sink in the eyes of the world, when they reflect, that his spirit was *alone* roused, when the occasion required neither *proweess*, *strength*, or *conduct*, and when even a victory, upon a fair plan, must, instead of bestowing laurels, have *branded* the victor with *disgrace*.

However, let the intelligence have sprung from what source it may, the charge against the judge was not more cruel than unjust: for, the moment that the report reached my ears, I wrote a letter [*See App. No. 15.*] to the collector, stating therein the plain matter of fact; who was pleased to send his son to me, with his compliments, acknowledging the receipt of my letter, with assurances likewise, that he would certainly return an
answer

answer thereto before his departure from the province (which happened one or two days after to the best of my remembrance) a promise, however, which he failed to perform, as I suspect for some *ambiguous reason*; as he could not but know, that I repeatedly declined any conversation with him, either in public or private, during the whole course of these disputes; and I was innocently forced, by his unexpected visit to me, into that discourse, which gives our remarker a *shadow* of pretence for his *ungenerous surmise*. Now, let any one for a moment place himself in the station I was in, and suppose, as the fact was, that a gentleman of the collector's years and rank in life, pressing me with lamentations that he had no lawyers to assist him, and without a rude, rigid, and even cynical behaviour in my own house, and under the real hardships to which he was in that respect exposed, that could, with any decency, say less, or conduct himself with more suitable caution or reserve. It is well known to Mr. Moore, that I have more than once intimated to him, that it was painful to me, to hear any thing mentioned which related, in the remotest sense, to any matter depending before me in judgment: but the event of the suit clears up every possible suspicion, because, the man that could so basely prostitute his office by giving advice in *one station*, would have made no scruple about the condemnation

demnation of the vessel in *another*; an advice therefore to seize, and a decree of restitution *afterwards*, in flat contradiction *there-to*, leave no room for the most *awakened jealousy* to harbour one dishonourable thought.

The collector and his conduct being, on the *first of September, seventeen hundred and sixty-seven*, the principal subjects of the judge's animadversion, it is a notorious fact, that I spoke with a bold and unreserved freedom; and that my observations were so pointed and severe, on divers collateral parts [*See App. No. 16, 17.*] of that officer's behaviour, that he changed colour, and many persons apprehended he would *faint*: in that agitation of his mind and spirits, he first *reported*, "that the Broughton-Island Packet" had been seized in consequence of advice "from the judge, acting as attorney-general," which was a barefaced falsehood; the fact being precisely as stated in my letter: when he cooled, and called to mind the circumstances therein mentioned, he found himself embarrassed, and unable to acquit himself with honour; which accounts, in some measure, for his total silence, and his breach of promise, in omitting to return a proper answer to my letter.

The probability that I gave such advice, and so far forgot my station and the honour of it, is contradicted by the judge's conduct in open court: for, if he had done so bad an act,

act, prudence would have dictated to him *smooth* and *oily* words, such as our extract-author sometimes uses; when *he means very little by them*.

It appears, by the Libeller's state of matters, page 8th, that the judge discouraging, on his part, every hidden artifice, stratagem or contrivance (if any such were meditated by the parties in the suit) and influenced by the strictest principles of justice, made an effectual and peremptory order for depositing the statute whereon the information was grounded, such as suited the necessity of the claimant's case, and was agreeable to the dictates of natural justice: and though this *doughty*, and, in law-matters I may at least safely add, *unlettered remarker*, is perplexed how to account for a difference of sentiment in the judge, between the two cases of the Wambaw and Broughton-Island Packet, and I, on my part, am restrained from discussing the particular reasons and grounds of the two decrees; yet I can with truth assure him that, upon a review of the whole matter, I am still of opinion, that there is a legal and very reconcileable distinction between the *two* cases. And it is the most *notable logic* in the world, that because he is in a strange element, clearly out of his depth, perplexed in an enquiry foreign to the whole study and labour of his life, and therefore unable to trace, with any degree of accuracy, the out-
lines

lines of the judge's sentences, or *precisely* to discern the hinge and ground-work thereof, that the judge must *consequently* be *partial, ignorant, and inconsistent* with himself: and it is still more strange, when it is considered that although the judge condescended to give some reasons (a point which I shall touch in the sequel of this performance) yet those very decrees contain expressions, that the judge *had* for such, among other reasons, *equally strong and cogent*, decreed, as the sentences declare; and therefore, without the gift of inspiration, he must be at a loss, to determine the entire plan and scope of his reasonings in those cases, or what reasons of law and justice in particular had the ascendant in the judge's mind.

On the head of *partiality*, I can with truth declare, that I could never charge myself therewith in any of my public stations, except in the case of our *remarker*, who was during the late Cherokee war, appointed lieutenant-colonel of the South-Carolina regiment, at my instance, and on my recommendation, as one of his Majesty's council, though his own partner, then a member of the board (who spoke *prophetically*) strenuously opposed me. This partiality of mine (though it was never meant to offend any other man) I now most heartily repent, and for a *better* and more *substantial* reason than what arises from the colonel's *infamous requi-*
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tai:

tal. In this instance, I must own (as things have turned out) that my understanding must have judged according to the inclination of my will, and not according to the reality of opposed merit and the truth of things; but time, which often sanctifies many acts seemingly pernicious, as often disgraces other measures, where original appearances give them an air of rectitude and justice.

It is amazing, that a man who professes any sort of *candour*, should seize upon a few loose words, as stated in page 6, which may drop from a judge's mouth, and which he may perhaps, in some degree, see occasion to recall afterwards, according to the different complexion which a cause may have at different stages of the suit; and therefore our law reporters always distinguish between the mere dictum or obiter saying of the judge, which often drops *unguardedly*, and his judgment or sentence, which is the sedate conclusion of his mind, upon full deliberation of the matter: and consequently, it is, in every sense, cruel and severe, to oppose the one to the other, for the sake of giving an appearance of absurdity or contradiction in the judge's conduct.

Before I proceed further on the remarks, I think it my duty to disclose every part of my transactions with a gentleman whose name has been so often mentioned; and the rather, as a person of *reputation, worth and honour*

banour informed me, some time since, that Mr. Laurens had (in his *base* and *dirty* manner, and like a *mole*, which works underground) insinuated, that I had received a *fifty pounds* currency bill from the collector. This sly reporter once asked me the question himself, and in his own *garden* I told him, that he had given me a *general retainer*. When I received this piece of information, I was much astonished; and that I might afford him the best and earliest satisfaction in the matter, we instantly referred ourselves to my cash book, wherein was the following entry, "1767, 29th May, to general retainer from Daniel Moore, Esq; collector, £. 50;" and upon the 19th June following there is also this entry, "retainer from Henry Laurens, Esq; vs. ———, £. 20. The plain fact stands thus: shortly after the collector's arrival in this province in March 1767, some difference arose between him and the merchants of this town, in relation to custom-house concerns, whereupon that officer applied to me, with a view of retaining me on his behalf. As nearly as I can now recollect these were my words, previous to my acceptance of the fee: "Sir, I must inform you, that I cannot act for you in any admiralty-case; and if any criminal prosecution should be commenced, my office of attorney-general will require me to support the same:" the collector with some little warmth answered, "can

“ can you suppose, Sir, that I mean to retain
 “ you in cases wherein you cannot in the duty of
 “ your station serve me ? ” I then replied, “ it
 “ is proper to state the exceptions ; and if any
 “ suit shall be commenced against you, in any
 “ other courts, I have no objection to accept
 “ your retainer ; ” he accordingly gave me
 fifty pounds. These facts I am ready to at-
 test on oath, if necessary ; and the conver-
 sation was in substance as above is stated,
 and I believe nearly in the very words.

The case of the Schooner *Active*, was ar-
 gued, and decreed upon, the month follow-
 ing ; and it is remarkable, that this very
 first cause, which the judge determined after
 receipt of this *alarming* fifty pounds, went
 against the officers of the customs, and in
 favour of the owner, and has ever since been
 esteemed a leading case respecting the *coast-*
ing trade.

Mr. Moore was, in September, acquitted
 from the penalties of the statute whereon the
 information was grounded ; and I may safe-
 ly add, that upon the circumstances of that
 case, and the evidence which was produced
 on the occasion, no *sound lawyer* will take
 upon him to say, that the judgment is erro-
 neous ; and if he meant a bribe by his retainer,
 it was money very ill laid out, for he recei-
 ved a woeful correction that day, in open
 court, at the judge's hand, as appears, in
 part, by the appendix, No. 16, 17.

It

It is worthy of remark, that if the Schooner Active was in prospect when the *retainer* was given, or if it was possible to suppose, that the collector had any *indirect* meaning by it, that he profitted very little, as the judge determined the cause in favour of the owner. And it is also a fortunate circumstance, that the affair of this schooner, and the seizures of the Wambaw and Broughton-Island Packet, happened some time after, and could not possibly be in contemplation when the collector gave this *general retainer*.

It is well known, that every judge of the admiralty in this province, and I believe in most others, has taken fees in his profession in the other courts; and any reflections of this sort, disgrace the man only whose *wicked* and *detestable* disposition prevails on him to make them. However, if Mr. Laurens is fond of throwing dirt, I will help him to a fact, which possibly he may turn to his own account, *that* his own *retainer* against Mr. ———, was given to me by him on the very day whereon I restored that vessel to the owner, and *previous* to my pronouncing that decree. He best knows his own intentions in the application. However, I can, with great sincerity and truth, assure the world, that as I received the collector's *retainer* with great innocence, so I also received that of Mr. Laurens's with the same honest simplicity of heart. If it shall be
said,

said, that the collector was a kind of party in the suit against the Active, though the information was carried on in the name of Captain Hawker, I believe it may, with equal truth, be said likewise, that Mr. Laurens was a party, by affording *some aid* to the owner, in conjunction with other merchants, in order to enable him to set up his claim, and to contest the merits of the seizure.

I hope no person will be startled at the amount of the fee, as I have never received less upon a *general retainer* in the course of my practice, and parties have often, of their own mere motion, given more; though I never took a fee dictated by myself, or which did not flow at once from the *warmth* and generosity of the client.

One other argument must (I should hope) remove every kind of doubt and suspicion in this case. If Mr. Laurens came to the knowledge of this retainer from the *collector*, he must either have mentioned it in that view, or charged himself with a crime nearly equal to that of taking the *bribe* itself; a piece of folly which it is not possible to suspect in a person who seemed *backneyed in the ways of the world*: and if he learned it from any other quarter, it was, because I never made a *secret* of the matter. In one event, the intelligence was a point of indifference, which the *publisher* has unfairly tortured to his

own bad purpose ; and in the other, it indisputably proves too much.

I flatter myself that no case was ever submitted to the public eye, attended with more favourable circumstances in behalf of the *accused* person, or with such peculiar aggravation on the part of the accuser. My public stations have required me to act in some measure in conformity to *them* ; my large family has also helped to allay that *spirit* which has *heretofore* perhaps been more ready to exert its *fire*, than to evidence the philosophy or prudence of the *man* : the day has been, when a different *defence* than what arises from the press, would probably have settled the dispute, without trouble to the world ; though I must confess, that one other difficulty starts up against measures of an *hostile* nature with my *present foe* : when first I set out in life, it was my wish, as well as resolution (if possible) ever to avoid serious quarrels and disputes ; 'till now, I have steered tolerably clear : I likewise then determined with myself, that if I should chance, through the *delusion* of prejudice, or a *filly compliance* with the *fashions* of the world, to engage in so hateful a defence, it should be only with a man of GENUINE and UNSUSPECTED COURAGE : the very idea of *valour* in a foe, inspires one with some portion of that *glorious virtue* ; and with the *brave*, a man may engage with some security to himself ; for great
minds

minds know how to prize *magnanimity* of soul, and if one falls, the *other*, with a kindred affection, instantly takes him in his arms, tries his best to heal his wounds, to reconcile the breach before the *parting moment*, and to conduct him to a place of safety and repose. Though I, on no score, take upon me to defend or countenance private combat in certain situations, I am nevertheless ready to exert myself in a public cause: I profess to be an *enthusiast* on that bottom: and (allowing somewhat for the feelings of human nature, which must give a momentary pang) I can with pleasure quit every temporal concern, together with the *ties* and *alliances* of blood, to defend my King, his laws, rights and dominions; and the liberties of my fellow-subjects according to law, whenever a day of danger shall require every man's arm to exert its energy and strength; and if this province, where I have long lived, should fall into distress, either through a foreign, an *Indian*, or domestic foe, and it should be my fate to fight by the side of Mr. *Laurens*, we will be *emulous* of fame together; we will spur each other on to deeds worthy the sons of Britain; we will forget our present strife; and if I yield whilst my strength remains, let him put me to the sword; and if he *draws* his own character into *suspicion* on such a fatal day, I will stay my *fury* against the enemy of our peace, 'till I provide

provide his friends with an excuse to bury his *disgrace*.

I come now to the 9th page, where he addresses himself to the public, *new judges of his own creation*, whom he compliments with a liberty of trying a judge duly appointed by the King, and known in the constitution, and after establishing this new tribunal, styles them *candid*, at the expence of a cruel insinuation to my *prejudice*, and then pertly, presuming to make them *cyphers only*, like an Eastern monarch, who keeps a parade of mutes to gaze with admiration at his own importance, he *arbitrarily* determines, that he is put upon a worse footing, as to *taxed costs*, than a *Smuggler* could have been reduced to.

The smuggler whom he alludes to, enhanced no charges by contesting the merits of his case, but prudently submitted to the justice of the court; and therefore, as being no party, but suffering judgment to go, as it were, by default, the costs must necessarily be paid out of the subject condemned, for nothing but the prosecutor and the subject of prosecution were then before the court. The more I consider the conduct and reasoning of this gentleman, the more he grows a subject of abhorrence and contempt. The same page must convince my readers of his want of *candour*, and his absolute *indifference* about investigating any matter, which must

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eventually operate against his own passions and illiberal surmises. If the love of truth had been a favourite object, he would surely have referred himself to the records of the court, which are in law the indubitable memorials of every transaction, and in that public repository he would soon have discovered, wherefore it was, that the seamen belonging to the *Dorcas* were indulged with payment of their wages. The proceedings shew, that they preferred a regular claim; that they were shipped in this town upon a lawful voyage, as they apprehended; and that the prosecutor *absolutely consented* to the payment of their wages: the decree in that case, after the recital part, which comprehends likewise their claim, as exhibited in court, runs in the words following, to wit, "*which claim was accepted, and the prayer thereof assented to by the said George Roupell;*" and the entry in the minutes of court, on the exhibition of the seamen's claim, is as follows, "*also moved, that the prayer of the said claim might be granted, and Mr. Rutledge, proctor for the prosecutor, assenting thereto, ordered and granted accordingly.*"

Whatever indulgence therefore was given, proceeded from the lenity and temperance of the prosecutor, who, in this particular, seems to have felt for the poor mariners, against whom nothing appeared in judgment,

shew that they were parties, in any criminal view, to the offence committed against the acts of trade: the judge then is totally out of the question, *consensus tollit errorem*; for the act of the party extended the relief, and it is a circumstance much in the prosecutor's favour, and proves, that he possesses what some people stand in need of, *bowels of tender mercy and compassion*.

There is a fatality which ever attends the machinations of the wicked. Think as we may, says our celebrated hero, speaking again of the Wambaw and Broughton-Island Packet, we shall find by and by those very decisions arraigned by the prosecutor himself; in support of which assertion, he shortly after introduces Mr. Roupell's *ex parte* affidavit. Now can any man, in his most sanguine moments, wish for a better justification, than what arises from this single fact, coupled with our author's invectives on the very same subject: when a judge captivates the soul of one party, and becomes his *little god of adoration*, we may be induced to speculate, and suspicious men, perhaps, may presume to insinuate, that he is warped by some partial considerations, or influenced by prejudice or passion: but, when he becomes the subject of abuse, and both sides pronounce anathema's against him; when on the one hand, the party relieved grows incensed, that the judge did not give him more;

more; and the *custom-house officer* grumbles, that he gave him quite so much; every man, in such a case, will naturally say, the circumstance of the judge's situation is ludicrous and odd, but will scarce be persuaded to assent, to any proposition, which infers an idea of a false bias in the judge: twist and turn the argument as you please, and wind it about into as many folds and ringlets as the snake encloses itself in, and the conclusion must be the same; the *entwistings* will unfold, and there will be no other essential difference, than what a circumstantial or external face, gives to the thing itself.

The same page, affords us a note of glorious rapture, at the bottom. "*Impartial honest Britons, reveal if you can,*" says our author: but as I have already sufficiently answered the matter of this *rapturous appeal*, I shall only touch upon the *tone* of it. Our author never goes in a *straight line*; if he did, he would, sooner or later, come to the end of it; on the other hand, he takes so many *irregular sweeps*, forms so many *angles*, *cuts in* and *starts out*, that his journey is never accomplished, or if it be, the fruits of it are a poor recompence for all his *toil*. This elevated strain of harmony might have suited the gentleman well enough three years ago, when his *political maxims* were differently directed; but since *that period*, he has found, I suppose, a more easy path to the people's

people's affections, and therefore I should not wonder at a *style* so ill suited to his *new plan* of policy, if I did not know, that absurdity, duplicity and contradiction are so intimately blended in the frame of our remarker's *constitution*. Those gentlemen who listen to his conversation, can best inform the world, what degree of affection these *honest* "*impartial Britons*" share: I shall therefore only offer his own words to him, as containing *two virtues* in Britons, which I think it full time, that he should cultivate himself: now, whether he means *honest* as properly descriptive of the term *impartial*, or vice versa, or, that all *Britons* are both *honest and impartial* (in which phrase I hope that I also am comprehended) must be left to the judges of polite address: and though our author may think himself entitled to the character of *honest*, in the affairs of meum and tuum, yet I have a doubt, how far any man can be properly termed an *honest man*, merely because he will not pick a *pocket*, when he makes no scruple to rob another of his reputation and good name: it is therefore no unreasonable wish, that he would learn to be *impartial honest*; an attainment very suitable to one, who presumes to judge freely the actions or conduct of his neighbour. And he must excuse me, if I give my own private sentiments, concerning this appeal of our author's to my countrymen,

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that it is by no means *sincere*; and that he is this moment as averse to the name (without a true principle of *public spirit* at the bottom) as his own innate worth falls short of their distinguishing and glorious virtues.

I pass on to the 12th page, where the judge is again brought upon the carpet, and sneered at, by our author, for expressions of a *mediatorial cast*. The court was crowded on all these subjects, and numbers must recollect, that the judge disrelished the disputes in general; that he recommended harmony and good-will, in which he had nothing more in view, than the peace and happiness of all parties, in their different ranks and situations: had such early recommendations taken place, Mr. Laurens might have been saved both trouble and expence; our own private friendship had, in that event, continued firm; and the peace of a numerous family been uninterrupted and secure; and I should likewise have been freed from that gross and injurious surmise which he cruelly propagates in the same page, that the collector *escaped the penalties and disabilities, which, in consequence of the suit against him, must have been inflicted on him, but for a mere quibble, in the judge*. The merchants of Charles-Town preferred an appeal, which they have omitted to prosecute: the judgment then stands unimpeached, except by our author; and it is to the last degree *uncandid*,

candid, to depart from the constitutional mode of relief, and to take the rod of correction into a man's own hand. But what must the world think of the *candid*, the *plausible*, the *smiling*, the *smooth* Mr. Laurans, who shewed me a letter from a correspondent of his in England (some months after all my decrees, except that in the case of the ship *Ann*) wherein he informs him, that there was no doubt but the judge's sentence, in Mr. Moore's case, would be assuredly confirmed, or to that effect.

Events have answered, in some measure, to this prediction; for, as neither the body of merchants, nor the nominal prosecutors in that suit, can be suspected to want *finance*, yet the *appeal* has been deserted from a conviction, *now* to be supposed, of the rectitude of the judge's sentence. By what authority then, does our author presume, to resolve the sentence of a judge, after a month's deliberation, into a *mere quibble*? or, how can he *play double*, and so boldly assert, that the collector escaped the penalties of the act by such unworthy means, when he is or *was* possessed of a letter, of the tenor already mentioned, speaking a language so opposite to our idea of a *quibble*? Passion and prejudice will tempt men even to acts of the most precipitate revenge, and daily experience shews forth, the mournful effects which flow from an *ill directed will*.

In the present instance, it is evident, that Mr. Laurens considers every *start* of his imagination, as a *charge* against the man : he nurses his *conceits*, 'till they *fasten* upon his understanding and *lead* him away *captive*, if not to his destruction, very much to his *disgrace* : but such are the delusions which malice, by some secret charms, imposes on those, whose hearts are ready for the spell, and then every impulse, power, and energy of the soul, tend to every evil work. The *malicious man* bears nothing so resolutely as *ill-will*, which he takes naturally to, as some do to gaming, and will rather hate for nothing than sit out, for he believes the *devil* (as Butler says) is not so bad as he *should be*, and therefore endeavours to make him *worse*, by drawing him into his own party *offensive* and *defensive* : such a man seeks out enemies, to avoid quarrels with himself, like a flourishing kingdom, that has not a foreign foe to contend with, will fall into a civil and intestine war.

I am now safely arrived at page 13th, which contains an *oath extraordinary*, as titled by our whimsical remarker. Whether he means, that it is an *oath extraordinary* for the deponent to make, as disbelieving what it contains ; or, that it is *extra ordinem*, that is, out of the accustomed order ; or, that it is *ex parte*, on one side of the case only, may be difficult to determine : however, I think that

that it means something; and therefore he has distinguished the same with two rows of *little stars*, which one set of people may, in their *pure simplicity*, set down merely as *embellishments*; others, as signifying a *hidden* and *mystic* sense, *hieroglyphical* of some shrewd whim or wild conceit; and others, who may be led astray by the extravagances of *Tristram Shandy*, will naturally suppose, that it is a *modest way* of saying an *immodest thing*: be these conjectures right or wrong, thus much I will venture to infer, that he means some *fly* compliment to himself; and as no pride is equal to that which is *spiritual*, we may reasonably conclude, as they do not, like the three stars at the end of *Cæsar's commentaries*; denote *defunct reliqua*, and by the number of them cannot possibly figure out any determinate phrase, or word of fancy, wit or humour, that he *therefore* means to denote the *heavens above*, to whose God the deponent is about so seriously to appeal for the truth of his said oath. This man, like the *Jews* of old, is deep read in the ceremonies of religion, and well versed in *ritual* and *unsubstantial* service; every thing he does, must be seasoned with a *sprig of piety*, as the many formal attendants at a funeral will, one and all, cast their *rosemary* after the body, without any other real motive than what custom and fashion prescribe on the occasion. But to the Oath itself.

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I no sooner heard that such an oath was made, than I took the necessary steps to obtain a sight thereof, and to question the party, as well as *magistrate*, thereon, and the letters [See *App. No. 18, 19, 20, 21*] in the appendix will sufficiently explain every doubt which can possibly arise. It is true that, previous to my obtaining that satisfaction which Mr. Roupell's letter afforded me, I believe I might be hastily led, in private, to utter some words of warmth and indignation; and my memory fails me greatly, if Mr. Laurens did not come to that knowledge from myself, in private friendship, the laws whereof have been, like the laws of his God and his country, by his late publication, most shamefully abused: but let this fact be as it may, those unbecoming expressions which he puts into the judge's mouth, page 16th, must have been, if at all, uttered previous to the letters referred to on this head: and it is an easy matter, for the world to distinguish, between the *irregular* and *rash sallies* of sudden heat or passion, and the *deliberate* and *evil workings* of a *malignant heart*; the former state of mind being, in the least favourable and worst sense, imputable to the judge, on that occasion (patience and forbearance having withheld him from any real act of injury or resentment); and the latter state this arrogant libeller has fixed upon himself, by a conduct which opposes every

every sound principle of that gospel, which he pretends to cultivate and adopt.

Mr. Laurens's genius exerts itself most in the 17th page; and he plays so many pretty tunes, upon the *bench*, the *judge*, the *oath*, Mr. *Leigh*, his *distinct characters*, and about the *action* against Mr. *Roupell*, and in giving a little *detail* of that affair, that I shall think it no lost labour to follow him in the way which he has set me.

The *merciful* Mr. Laurens brought an action against Mr. Roupell, on account of his seizing the Broughton-Island Packet. Upon the commencement thereof, the defendant applied to me for assistance and advice; which I declined to afford him, unless the several gentlemen of the profession, after application to them, should decline to take his case in hand; whereupon Mr. Roupell retired, made his application as I recommended to him, and how far he succeeded appears by his letter [*See App. No. 22.*] to me, in an official way, as attorney-general; and I must own, that I considered myself obliged to him for trying any experiment elsewhere, as I could not but consider his claim upon me, in the station of attorney-general, as natural, and if not strictly a matter of right, it was certainly near a-kin to it. Upon the receipt of this letter, it was impossible, in any view of the case, to decline the business, and circumstanced as that officer was, it became

came a duty of *unquestionable obligation*: I therefore undertook his defence, but with all that *cautious* and *disinterested* regard, which a good man will ever study to observe, rather than shipwreck a reputation, which had cost him much time and labour to acquire, and which it is, in all situations, truly honourable and becoming to maintain. I refused a fee from Mr. Roupell, though he was polite enough to offer me one, and considering myself merely as a minister of the crown, called forth by necessity, I accordingly confined myself to that character; for it was the *officer*, not the *man* in his personal and individual capacity, for whom I was to labour a defence. In order to avoid every suspicion of receiving any recompence, I determined to sit down with the loss of such fees as accrued to the judges and officers of the court on the defendant's part, which I have paid out of my own pocket, lest a *suspicious* world should cruelly insinuate, that under a charge of those fees I had comprehended such as were likewise due to myself. No intimacy ever subsisted between Mr. Roupell and the late judge, and of course there could be no *renewal* of *that* which never had existence. When Mr. Roupell made that concession which was due on occasion of the oath, the injury was, in some respect, repaired; and I had not the same reason, as in the present case, to pursue

sue him a public way, the author of the offence not only being more temperate in his conduct than the *outrageous* Mr. Laurens, but even disposed to make any further atonement in his power.

The lenity and moderation of our provincial laws empower the judges to assign counsel to the basest criminal, on his petition, though in law the court are ever considered in that light themselves; and in civil cases, it is no unusual thing for courts of justice to interpose, and direct one or two counsel to return their fees, and engage for the party who is deprived of assistance by his adversary's means.

Is it fit or reasonable, that a man totally unskilled in the science of the law, who can neither state or mature his case, according to the form and order of legal procedure, and much less argue the merits thereof, should be forced to a trial in that destitute condition? Can any man of humanity contend, that his adversary, in a free country like ours, where the trial of right is so conspicuously candid, shall (by reason of any popular cry against his cause) be deprived of every possible means of making a *suitable defence*? A despotic prince, whose will is law, may proceed without form, *that* being only a circumstance, where the justice of a case is not the object of enquiry; but in a constitution like ours, dignified by the most liberal

liberal indulgences in favour of the subject, let the man sink into contempt, whose hardness of heart can steel him against the feelings of humanity.

Our law, is a law of *perfect charity*, which supposes that every man is innocent, till he is legally convicted. Upon this principle therefore it is, that the judges exercise a large discretion, with respect to the bailing of those who stand charged with criminal offences; and surely the personal rights of men are of some importance likewise: none will contend, I hope, that they should be torn from the roots; or that one party in a cause shall dish out his case with the eloquence of every man at the bar, and the other be dragged to the forum, helpless and forlorn as the infant in its mother's arms, who, though it may offend its parent, by its tears, is unable to utter the occasion of its woe.

The 43d clause of the Jury Act of this province, passed the 20th of August 1731, recites, "*that many innocent persons under criminal prosecutions may suffer, for want of knowledge in the laws how to make a just defence;*" therefore it enacts, "*that all persons that shall be accused and indicted for high treason, petit treason, murder, felony or other capital offence whatsoever, shall have a copy of their indictment, and make their full defence by counsel: and in case any persons so indicted shall desire counsel, the court shall, and is thereby* authorized

authorized and required, immediately upon their request, to assign to such persons such and so many counsel, not exceeding two, as they shall desire, to whom such counsel shall have free access at all reasonable times, either before or after the said trial, any law or usage to the contrary notwithstanding. " This indulgence is too great, to be extended, in civil cases, to those who are the objects of our remarker's resentment, his appetite being whetted for revenge (*for he thinks, with Zanga, that revenge is sweet*); he loses sight of mercy, and every principle of law and justice: he is old enough to know, that our law approves the best trial, as well as the best evidence upon that trial, and delights in equal and impartial justice. When a cause has passed certain stages, and is brought to the jury for trial of the merits, the pleadings are opened to them by counsel on that side which holds the affirmative of the question in issue, as also the nature of the case, and the evidence to be produced; and when their evidence is gone through, the advocate on the other side opens the adverse case, and supports it by evidence; and then the party which began is heard in reply: this is the mode observed on every trial by jury; but our lover of truth (if we may take his own word for it) is for introducing a new practice, by adopting one part of this order of legal procedure, and leaving out the other, that is, he would

would have *bunted* the defendant down with his own counsel, and enjoyed a secret satisfaction in his distress, and also have laughed, no doubt, at his impotence, weakness and inability to maintain the struggle with them. This conclusion is just, and fair, because there was no man to defend Mr. Roupell, but the attorney-general himself: if therefore he would blame or ridicule that officer, for *descending* from the bench (as he improperly terms it) he in effect declares, by such censure, that the defendant should have been left destitute of counsel: but if, on the other hand, he should now contend, that he did not mean to deprive his adversary of counsel, he is then necessarily drove to this dilemma, namely, to acquit me of all imputation, who only became engaged for the defendant *ex necessitate rei*, and also to acknowledge, that he has, in this instance at least, made "*much ado about nothing*." Thus have I plainly stated, how I came to be engaged on behalf of the defendant; in which cause, as in every other wherein I appear as counsel, I always keep in remembrance (and in some degree I hope adopt in practice) the advice of that valuable man *Bishop Sanderson*; to the pleader, in his assize sermon at Lincoln, being the third sermon *ad magistratum*, page 164, "*not to count it, as Protagoras did, the glory of my profession, by subtilty of wit and volubility of tongue, to make the worse cause*"

cause the better, but, like a good man, to use the power of my tongue to shame wit and impudence and protect innocency, to crush oppressors and succour the afflicted, to advance justice and equity, and to help him to right that suffers wrong. By this time, I hope, that all those sneers, which are so lavishly bestowed on this part of the judge's conduct, will no longer influence the mind of a candid reader.

I come now to consider what has provoked our author to act so strange a part. Every circumstance convinces me, that *revenge is the stimulating cause*. But it may be asked, how comes it, that a passion so hateful in its nature, so repugnant to those general laws of sociability and affection which are by the all-wise God interwoven in our frame; how comes it, that so evil a passion can arise in the breast of Mr. Laurens, against his *once* affectionate friend? The reason partly springs out of the *last* short detail respecting the action in which I appeared on behalf of the defendant. I charge THIS to be a *fact*, because I can support it by *incontestible proof*, by evidence not to be resisted. He never meant to publish any libel; a sense of injury was the remotest sentiment of his heart; and he has declared, that his indignation has been raised *principally*, if not *solely*, by the circumstance of my engaging in the cause of Mr. Roupell in the court of

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common pleas ; in a cause too, the defence whereof was strictly reconcilable with the sentence of the judge in the admiralty court. How far the ground of his resentment is good, must be left to the judgment of mankind.

If my conduct shall be thought, in this respect, consistent, just and right, every one must approve my warmth and steadiness in support of the man whose cause I so espoused ; and perhaps, in the opinion of many, my resolution to do so at every risque and hazard, against the *popular voice*, without *fee or reward*, or *promise or expectation* thereof, in *opposition* to all the men of *eminence* at the bar, and at the risque of losing both a client and a friend, may be considered as some little testimony of my virtue and principles as a man.

Resentment begot the action, no wonder then, that it should be transferred to me. My attempt to defend the forlorn and hunted officer, and my certifying probable cause of seizure in the case of the ship *Ann*, whereby I so boldly and intrepidly (and according to his idea, no doubt, *presumptuously*) endeavoured to protect the same officer from the power of the *tormentor*, were injuries not to be forgiven. To ravish from the devouring paw of a *wild beast*, a *sweet morsel*, when his hunger is keenest, must rouse every latent principle of *fury*, and kindle each *ferocious inclination*.

inclination. Our remarker, labouring under fierce and unruly passions, the worst too, that can disgrace human nature, has now turned his *fury* upon me, by a libel, which would almost create a belief, that all the malice in the world was *concentered* in one man, and blended into one performance.

I must own, that I exerted my best talents (such as they were) on behalf of the *persecuted officer*, and exhausted every argument which a close application to his case suggested to me; and my reasoning was not considered by the judges as *flimsy*, *plausible* or *capacious*; two out of three having directed the jury to find for the defendant; and though a verdict was given for the plaintiff, the damages fell greatly short of the expectations of the *party*: and therefore, though I *failed* of success, there is no room for a *bold assertion*, that I was “*posed by stubborn facts, or entangled in my own tenets*:” and if it was necessary to enter upon a discussion of my conduct after the trial, on the motion which I made for a *new* one, it would be found that I had performed my duty with spirit and attention. One of the plaintiff’s counsel hinted at some part of the judge’s decree; but he, knowing his business, and disdaining to discuss any point before a court *not armed* with jurisdiction, did peremptorily refuse to give any satisfaction in the case; and the wisdom and justice of the court gave
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warrant to a *refusal*, which the law dictated, and decency cannot but approve.

In the course of my arguments upon that trial, many of them suited so exactly the plaintiff's case, that, in *David's words*, I have reason to believe, he thought them *very swords*. My affection for Mr. Laurens, diminished in proportion as his zeal warmed him to act a vindictive or oppressive part, and notwithstanding the verdict went in his favour, the case was marked with several circumstances which spoke for the defendant. From this *period*, our author's resentment became kindled against me, and the streams of his anger, finding a sudden and unlooked for *resistance*, like waters rising above their natural and accustomed banks, deluged all before it, and ever since, his streams have been *putrid, corrupt, and black*, as the waters of *Cocytus* running through *hell*.

After a toilsome journey through a most *rugged and perplexed path*, I am at length arrived at the ship *Ann* of Bristol. Many little reflecting hints scattered about, on immaterial points, are unworthy of a serious answer; I shall therefore incorporate them with such matters as seem to merit more peculiar notice. The author, page 26, speaking of Mr. Hatley the deputy collector, gives the reader to understand, that the judge ordered him into court, and after a *seemingly severe* reprimand, he required a more proper answer

answer to the fourth interrogatory; and so, being thus as it were *compelled* to say something, he was again sworn, in open court, when he deposed as is therein stated. Now, from whom did the complaint arise? From the *author's proctor*. To what end was it made? For *redress*. How could that be effected without the aid of the judge, whose business it was, to suppress any answer which tended to affect the honour of the court? and how was the party to obtain satisfaction, unless the witness was compelled to give a precise answer to the interrogatory, according to his knowledge; which, by the complaint made against him, he had waved, upon a pretence of being accountable only to his superiors for the practice of the collector or his deputy, when the very question turned upon a point of practice in that office, to the custom whereof I could not well suppose he was a stranger?

As Mr. Hatley was the subject of the judge's reprehension, he would wish to refer the *reprimand* to him, for an accurate explanation, as he certainly is the best evidence which such a case can possibly admit; for no one can guess so shrewdly at his feelings on the occasion, as the person who is the subject of it: but, if I may be allowed to give my private sentiments, he was infinitely embarrassed and distressed; and as a man, I am not ashamed to say, that I sincerely felt
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for his situation, though it was not in my power, as a judge, to administer relief. Every person who attended the court may be appealed to likewise, and I am perfectly willing to submit this point in particular, and indeed all others, to their own conclusions. It is not my design, to enter into the defence of other men's reputations: he who suffers an attack, is the proper person to resist the outrage. However, I think it my duty, in point of humanity, to declare, that the judge did *charitably* forbear to make odious comparisons, or to stigmatize the reputation of a young man, when he had no motive to commit an act so heinous as our extract-author insinuates to mankind.

The severe animadversion of the judge, for an appearance of contempt to the court, before a numerous and crowded audience, was alarming, and if he (remembering his Majesty's *coronation oath*) mixed *mercy* in judgment, Mr. Hatley was not the only instance wherein it was extended: for, if rigour had been the plan of conduct, the writer whom I now vouchsafe to answer, must, in all probability, have supplicated the judge of the admiralty court, for *relief*, for *liberty*, for the benefit of the *pure air* which Ansonborough affords: his *impertinence*, by letters, before *probable cause* was certified in the case of the ship Ann (letters wrote with a manifest view to deter him from his duty) must have

have secured him a lodging in the common goal of Charles-Town : their stile and language, in my poor opinion, reflect dishonour on the *writer*, therefore I forbear to make them public ; the author is exposed enough already : if he is sollicitous to become more so, let *him* send them to the printer, and, like one of Shakespear's *filly* constables, beseech the *town clerk* to set him down an *ass*.

The notes which the judge wrote in answer, are in the appendix [See No. 23, 25, 26.] His moderation and tenderness will appear thereby, it is hoped, in no unfavourable light ; the peace of *our house* will prove to have been an object of his serious attention and regard ; and if vanity had any influence, I should certainly bring the letters to public view, because the moderation which I barely hint at, must, on such a comparison, rather create astonishment, as it rises superior to that spirit, which too often governs the *perverse* and *untoward* affections of mankind. I shall pass over the author's reflections in the 28th page, as I am under no apprehensions, that they will have any undue influence on the reader's mind : a moment's pause, will enable him to recall, to his memory, arguments and observations sufficient, to refute such *malignant* and *inveterate* remarks.

As Mr. Laurens proceeds, his rancour seems to grow, his *malice* heightens, and his bitterness if possible encreases ; for the whole
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his sixteenth remark, in page 29, is not more cruel, than it is destitute of *truth* for its support. The register of the court must recollect that, upon the publication of the evidence, the judge observed, that the witnesses assigned no reasons whereon they grounded their belief, in relation to the officer's motive for seizing the ship *Ann*, and therefore directed that, in future examinations, he should take special care, that the deponents disclose the grounds and reasons on which they found their belief. Perhaps the odium cast on the prosecution, out of doors, and, the several witnesses (except one, who made a kind of *half proof*) barely declaring their belief that the prosecution was commenced through malice or resentment, unaccompanied with any reasons whereon the court might be able to judge whether such a belief was well warranted or not, may account for the judge's conduct respecting the *oath of calumny*; but every man must see, that, after publication of the evidence, and the cause at hearing, no impartial judge, without a formal and regular application, and under certain terms, could by any means enter into an enquiry, upon what grounds the deponents founded their belief; neither would it have been just and honourable, for him to fish for explanatory proofs. Had the judge taken upon him to interrupt the cause (supposing what is not the fact, that he had a

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power of himself so to do) by an adjournment, had also directed the officer to re-examine those witnesses or others, and on such a pretence had protracted the suit, our *charitable* author would have quickly explained such proceedings, by the sum which, in his 28th page, he makes payable for each court, to the judge alone: he would have been the *first* man to arraign him as a partial judge, as one devising every method of delay; and the world might have been induced to credit such a charge, if he had, on that occasion, overlooked the constitutional practice of the court, which armed him with a power of administering an oath to the person who must of all others be the most intimately acquainted with his own thoughts, motives and principles of conduct. In this dilemma, the judge had no other means of expiscating the truth, and of fixing or removing such heavy imputations as were cast upon the cause. If any inconvenience therefore arose to the claimant, because he did not hunt after new evidence, the remarker should fix the blame in some other quarter. Why did he neglect to examine Mr. Logan and Mr. William Savage in the first instance, whom he mentions in page 29? or, why did he omit, by his proctor, in due form, to apply to the court to have the custom-house books produced, to invalidate any part of the evidence? an application which would

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probably have met with favour and regard. And how came it, that the claimant omitted to establish, in due time, his chain of proofs? *Vigilantibus est non dormientibus subserviunt leges?* Now mark the candour and goodness of this man: a principal point in the cause was neglected; the persons to prove it, who are residents in town, were never called upon, or even their names mentioned upon the claimant's list of witnesses, which it is usual for parties to file with the register; or any one step taken to prove what the prosecutor's motives were for seizing the said ship; neither was any motion made for production of custom-house books, or for admission of further proof, as the transactions of the court do manifestly shew. Publication then being passed, and the cause at hearing, the judge, by law, was obliged to proceed upon such evidence as the parties laid before him: he, without regard to either party, being desirous to fix a point, which (circumstanced as things were) merited some notice, pursued the legal course (though a power, he must own, which should be exercised only on such a pressing occasion) and the party purged away the imputation: Therefore our notable reasoner concludes, that his honour had *predestinated the fate of the ship, as he was pleased to pass over the whole in silence.* Can it be said with justice, that the judge passed over the affair in silence, when he pursued

pursued the course of law, to discover that, which the claimant, through ignorance, neglect or design, had omitted on his part? or, can it with truth be insisted on, that he acted arbitrarily or unduly, when he pursued the legal and constitutional course, in order to remove or fix an imputation, which, in this stage of the prosecution, had drawn the same into some suspicion, accompanied with a general outcry from almost every quarter? Those who attended the court must have observed, that the judge laboured to do impartial justice; and it is the consciousness of his integrity, and the confidence which *that* gives, that now supports him against the unmerited slander of a *prostituted pen*: he was too upright, to predestinate the fate of any matter which came before him in judgment; and the horror of the surmise, instead of wounding the man, raises in him tears of compassion for the desperate and deluded state of our author's mind.

Mr. Laurens, after paying a compliment, page 30, to his friend Mr. Manigault (to whose goodness he daily offers up the morning sacrifice of hat and hand) adds, whose *veracity* was never suspected by any man but a *judge of the admiralty*; and then, by a note, alludes to some expressions of the judge, in the case of Manigault and Neufville against Daniel Moore. By his own account of the matter, nothing like a doubt appears touch-
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ing that gentleman's veracity : I never questioned it ; such a thing was foreign to the purpose : our author therefore, to rivet himself, if possible, more closely in his affections, tortures the expressions, to answer a *pitiful* end of his own ; perceiving, no doubt, that a publication of extracts, furnished him with a glorious opportunity of making some honourable mention of his name. The late judge sincerely believes, that Mr. Manigault never harboured such a thought ; and for his own part, he frankly declares, that he, on no score, meant to question his honour or veracity ; and he entertains so good an opinion of our author's friend, that he is confident, he will do no act to sully the lustre of his reputation ; though it is possible, that his *patronage* of a man so ill-disposed, as Mr. Laurens proves himself to be, by his wretched publication, may silently and insensibly draw it into question, amongst strangers at least.

The same expressions, which our author construes as a reflection on the character of Mr. Manigault, alluded at the same time to Mr. Neufville, for both were prosecutors, and equally engaged in the same pursuit. People abroad will be apt to say, that the judge's words, according to this gentleman's construction, must surely have applied to him, as he neither touches his name or reputation : so total a silence, so unpardonable an indifference, may give occasion to some,
to

to doubt *his* veracity and worth; and therefore I think it a piece of common justice and candour, in me, to assure the world, that I never meant any personal offence to the prosecutors, and that I believe Mr. Neufville likewise to be a man of unblemished reputation.

Our little dabler in law has now conducted me to his comment on the oath of calumny, which, he informs his reader, the judge demanded *ex officio* from the prosecutor in the cause. It is matter of doubt to me, whether his own lawyers helped him to these two Latin words: I have a shrewd suspicion, that he came to them as fools do, now and then, to handsome fortunes, without merit; and like such *simpletons*, who are ever ignorant how they shall dispose of their *adventitious goods*, or convert them to a manly and honourable use, *he*, on his part, is at the same straight and difficulty with himself, in what manner to apply the *phrase* which his friend bestowed upon him; for he, very injudiciously, confounds the oath which the judge administered in a civil suit, with an oath *ex officio*, which Lord Bacon alludes to on a different occasion. Though the benignity of our law will not suffer any man to accuse himself *criminally*, the same law will nevertheless permit him to disclaim a particular demand, or renounce an original right, and our author's quotation from Puf-

fendorff,

fendorff, tends only to discover his ignorance and folly; for, in the present case, wherein this oath was administered, capital punishment was out of the question, and the only *inconvenience* to the party was the costs of suit, and the circumstance of being exposed to an action if *probable cause* had not been certified; and such possible losses or hardships as these, are by no means the *grievous inconveniences* which that celebrated casuist speaks of. Our author's passage from *Plato* (which by the way he picked up out of Pufendorff) "*admits of an oath, only in such cases, where, according to the judgment of men, no advantage can be got by forswearing: but, where any profit may be reaped from the perjury, there he orders, that the process shall be managed without oaths.*" If our remarker means to strengthen his case, by the aid of this Heathen moralist, he will find himself mistaken; for he must first shew, that the admiralty court and its practice are founded upon his principles and policy; and unless he is able to *evince*, that his laws have been incorporated into our own, they can no more apply to the present question, than any of the slavish and burthensome observances mentioned in the Jewish ritual. I remember, that *Plato*, in his *politicks*, in order to banish out of his republic all property, ordains a community, not only of goods, but also of wives and children: but our author will

will scarce argue from hence, that because this ancient sage ordained so defective a rule, that the people of this generation are to adopt the same, as a principle of government to them. If Mr. Blackstone, in his lectures on the common law of England, had drawn his conclusions from the Roman and imperial constitutions, his system must have been a confused assemblage of incoherent scraps. All courts judge according to the principles and maxims of that law, which are the foundation of their practice and proceedings; and it would be as absurd, for an admiralty court to adopt the maxims of the common law, as for a court of common law or equity to admit the laws of the Medes and Persians within the pale of their respective jurisdictions.

I admire both the virtue and philosophy of *Plato*, in many respects; though it must be owned, that his works contain many extravagant and wild *conceits*: some whereof, perhaps our remarker would relish well enough, for his own particular convenience, as, for instance, that “*women should be destined to the same employments as the men,*” a provision this, which would divide the cares of life more equally, and afford a larger share of comfort to the male: those who are fond of making their *wives drudges*, will fall into *Plato's* scheme without dispute: for my part, the *line* of their duty, as laid down by our

own nation, is, in my opinion, more reconcilable to their nature, better suited to their capacities and powers, and more honourable to the men, whose study it should be, to soften the women's cares, though they should thereby encrease their own.

Concerning this oath of calumny, Mr. Laurens proceeds to give one of the very reasons the judge went upon; for, as he observes from Puffendorff, in some cases, when *other proofs* are not sufficient, the judge may put the party to his oath, though he do not desire it. Civilians can make no doubt in so plain a case: and that he also may see the judge's conduct in a clearer light, he begs leave to transcribe a passage or two out of a book of authority, in the original language in which they were wrote, in order that his son (by giving it an English dress) may return the obligation which he lies under to his father, who made use of him to retail out, or rather drop, his dirty poison through the town, like the printer's mercury, who circulates the weekly paper of occurrences.

“Est autem aliud juramentum calumniæ speciale alio nomine malitiæ non committendæ dictum, quod quoties judici æquum visum fuerit, litigatoribus etiam invitis ministrari possit idque lite contestata, vel juramento calumniæ generali præstito, vel non præstito.” The same author, speaking of the general oath of calumny, subjoins, *“Quid juramentum hujusmodi*

modi nisi semel in causa præstari debet atque etiam plerumque statim post litem contestatam fieri solet, si tamen tunc omittatur potest postea in quacunque parte judici exigi."

Both Confet and Domatt, and every civil law writer of any repute speak the same language. If my reader is unskilled in the Latin tongue, he may be assured that the *oath* (such a one at least as the judge directed in Mr. Roupell's case) may be administered at the instance of the judge, whether the parties in the suit require it or not, and if he pleases with or without their consent, and in any part of the proceedings.

It is a nice question, whether an oath may be required of a person, when we have reason to believe that he will swear falsely: but, says Barbeyrac, in his notes on Puffendorf, "*We speak not here of a judge; for the laws, in certain cases, order him to administer an oath, and he must conform himself to them, without troubling himself about the manner how they, who take the oath, can do it.*" Now granting, for argument sake, that the judge had entertained some slight suspicion in his own mind, that Mr. Roupell would rashly take the oath (a suspicion which, I freely own, never intruded itself into my thoughts) yet it was impossible to determine, that he *would do so*, and therefore it stood wholly dubious and indifferent, and consequently the person must, in such a case, be left to

act *suo jure*, and at his own peril, as he will answer at a future day before the God of truth.

Mr. Noodt has shewed, in his *probabilia juris*, lib. 3, chapter 6, and in his commentary, page 287, 288, that *inopia probationum*, that is, *want of proofs*, is, when there are *such* proofs, that the judges know not how to determine some particular point of controversy and dispute; in this state of things, he puts the party to his oath, in order to cast the balance, and to determine his judgment, which hangs suspended, as it were, in difficulty, perplexity and doubt. This was the very state of the question respecting the prosecutor's motive for the seizure; the witnesses said enough to create suspicion, though not to fix an *absolute belief*, and therefore it became necessary, to resort to the *man* himself, from *whom* there was no reason to expect an evasive, much less a false and dishonourable answer.

The author, page 32, complains of the hardship of requiring such an oath, where the prosecutor *could plead* his *commission* and *an act of parliament*; and, page 2d of his *retrospective reflections*, he thinks it cruel, where an officer makes a seizure, and *deems that a sufficient justification of his conduct*. He contends also, that it is still more cruel and unjust, after such officer had declared openly his motives for making the seizure, when
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the judge had no suspicion of his character, but demands it, *for some special reasons in his own mind.*

This *jewel of a man* (in Foote's humorous stile) considers the measure as most or superlatively cruel, where the officer may plead his *commission* and *orders*; and he contends, that a judge may be suspected of sinister views, when he exacts such an oath from an officer, "*who hath other proofs sufficient to justify the first act of seizure.*"

I have purposely thrown all his reasoning together, on the oath of calumny, that I may in one view give a full answer to the whole.

It appears to me, that Mr. Laurens, who is attached to *no man* or *party* long together, weary of abusing Mr. Roupell, is now become a staunch advocate in his favour: he does not see, that his *changing sides* will tend to confute himself: he is not aware, that this appearance of sympathy for the officer, will infallibly involve him in a palpable absurdity: neither does he clearly perceive that, when he pretends to compassionate the man, he entangles himself beyond recovery. Now it is not *pity* that creates these scruples in our author's mind; for, if he had a *milkeness of nature*, he would not have taken so much pains to defame his reputation: his passions then being, in this instance, bent against the judge, it was necessary for him to place the officer

officer in such a light, that a shade of a *darker cast* might fall upon the *judge*, and consequently his readers must be thereby led to join more heartily against the *one*, in proportion as he could paint, in *strong and striking* colours, the distressful situation of the *other*. Let us examine the *strength, sublimity and consistency* of his reasoning, the substance whereof is, that if an officer *thinks*, that his authority to seize is a justification, especially when he makes a public declaration of his motives, and pleads his commission and orders, the oath ought not to be exacted: in this view of things, a judge is a blank, a cypher, and the course and order of the civil law is at once abolished; but a man of discernment, however, will pay very little attention to the sayings of the parties; and where an act of parliament and an officer's instructions authorize a seizure, and the proofs convince the judge, that the property in question must be finally condemned, the case of *malice* or an *evil motive* in the officer, cannot *there* eventually deprive the persons interested of the effect of their seizure: but where a judge, from the general complexion of a case, from the *pleadings* and *exhibits* in the cause, *sees clearly*, that in strict justice the seizure must be restored to the claimant; where the prosecution is cried down, and a popular clamour is raised against it, as being promoted upon an evil principle of malice

and

and resentment; where the witnesses also raise scruples, without establishing the fact whereon *such doubts* arise; it may be proper, for these, and many other reasons, to investigate the *motives*, in order that the judge may determine whether he will proceed further in the cause or not, and what proportion of costs the officer shall pay: when he exercises his discretion with prudence, and with a strict eye to complete justice, when it is known that *such an oath* may be required, the power of administering it may check frivolous prosecutions, and restrain officers from using their commissions as *rods* to scourge, when they are given them *only* upon a general and public plan of commercial policy; and cases may be so circumstanced, that he may properly and consistently call in the constitutional practice of his court, as a court of civil law; and, surely, it cannot be contended, that any thing less than an act of parliament, can controul, alter, abridge or annul the essential, inherent and ancient practice of a court of justice.

Our author is neither satisfied with or without *reasons*. His book tends to abuse the judge for giving reasons, and he sneers at him in the affair of the oath, for retaining "*his special reasons in his own mind*," I never met with a man so difficult to please. How it came into his head, that a judge might be suspected of *sinister views*, for ex-
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acting such an oath, from an officer who hath *other proofs sufficient to justify the first act of seizure*; exceeds my comprehension; for, by his own state of the case, he is angry that the *oath* was required; and the party who took it, rather seemed to decline it, by retreating to his commission and instructions: what *sinister views* then could actuate or influence the judge, when the proposition was relished by neither of the parties? but, as if our author laboured to entangle himself in new difficulties, he seems to admit, that this officer *had proof enough*, without this *hated oath*, to justify his seizure; a concession which I had little reason to expect, but which, however, is equally consistent with many other parts of his conduct and performance.

Mr. Laurens, page 33, raises a new battery, by stating the *grievous* inconveniences to which the poor officer was exposed; and he very ingeniously, as also *charitably* supposes, that as he must certainly have perceived the dangers which he sets in full array, *he* therefore took the *judge's hint*. This is one of the most whimsical receipts for an *act of perjury* I ever met with, and our author has the sole merit of claiming to himself the *discovery thereof*.

The *oath* was required by the judge, to be taken or refused: the party had it in his option, to act agreeable to the dictates of his conscience;

conscience ; and no person, much less one in a judicial station, should suppose, that a party whose character stood clear before the court, would be hardy enough to trifle with a sacred test. If an imaginary fear, that a man will flatly perjure himself, to avoid such evils as Mr. Laurens states, is a good objection, the same will hold almost equally strong in every case, and consequently it strikes at the whole system of legal administration : but, independent of such reasons in support of the argument, nothing is more clear, than the judge's right, as grounded upon the civil law ; a right which has been exercised, in certain cases and emergencies, from the days of Justinian to the present time : the whole practice of the court of admiralty, and great part of our proceedings in our courts of equity, are framed *upon*, or owe their rise to, the practice of the *forum Romanum* : trace it, from one stage to another, and it will be found conformable, in many particulars, to the old *imperial constitutions* ; claimants answer upon oath, as defendants do in chancery, notwithstanding they are immediately interested in the subject in dispute ; and though the common law does not allow, that a man shall be a witness in his own cause, yet those courts who chiefly govern themselves by the rules of the common law, proceed according to the maxims and principles of that law ; and therefore

therefore, in the case of * *Williams* against *Lady Bridget Osborne*, there being, on a question of marriage, a *variety of evidence* on both sides, the judge required the oath of the *party*, which the civilians term the *suppletory oath*, that he was really married, as he supposes in his *libel* and *articles*: the party being admitted to his oath, the lady appealed to the delegates, and the sole question *there* was, whether the judge ought to have admitted Mr. *Williams* to his *suppletory oath*; the court held, that this oath is, in *arbitrio judicis*, and the cause being of ecclesiastical cognizance, the civil, and not the common law, is to be the measure of *their proceedings*, and therefore, the oath being agreeable to the civil law, the court of delegates held, that the judge, under the circumstances attending the case, had done right in admitting Mr. *Williams* to his *suppletory oath*. Upon the whole *then* of this case, so far as it relates to the *oath of calumny*, the enraged author has presumed to arraign the justice of his judge, in a point of which he is totally ignorant; and has also taken upon him to draw conclusions, which his own fertile imagination has alone supplied him with; and to forge the most unnatural conjectures which the wit and artifice of man could possibly invent.

Before I dismiss this subject, it may not be

be altogether foreign, to offer a conjecture concerning the disrelish which our author shews, to this oath of calumny; for in *this*, as well as in many other instances alluded to, he *seems* to have his face *shielded by a mask*: it is therefore my determined resolution to shew his *naked countenance* as often as I can. I conclude *then*, that he is grievously offended, that the reproach which was so industriously propagated, in relation to the suit, as being carried on through malice and resentment, could be no longer legally questioned; such an imputation being purged away, by the oath of the prosecutor himself.

Our short-sighted remarker seems to persuade himself, that the certificate of *probable cause* was owing wholly to the prosecutor's compliance with the requisition of the judge. He is mistaken: and if he was at liberty to assign his *special reasons*, or to canvass the grounds and principles of his several decrees, he is well convinced, that his honour, justice and integrity would shine forth, to the confusion of the man who has dared so shamefully to doubt them: however, I have not omitted to enter upon all collateral points, and to observe on such remarks as reflect any disgrace, or tend to draw my character into suspicion or contempt: and sorry I am, to be deprived of a *legal chance* of being justified, upon the true merits of

each prosecution, before a court whose knowledge would enable it to scrutinize with the most scrupulous exactness; whose justice, as well as power, would at the same time be exerted to the affirmance, alteration, or reversal of the sentences; and whose benignity, and condescension to human fallibility, would point out the distinction between an error of the judgment, and an error of the will.

The remarker, in page 35, intimates, that from the judge's own reasonings, innocent owners have been ensnared, by *villainous officers*, and so proceeds to make some charitable inferences, agreeable to his *wonted manner*. I can with truth freely declare (and I say it without vanity) that I never suffered myself, in my judicial character, to be so far transported, as to speak in a stile so ill suited to the judge's station; and having for some years past cultivated a little acquaintance with the purest writers, I am confident, that such unbecoming phrases never dropt from the judge's mouth.

The author is displeased at the amount of costs: but the judge is free from any charge on that account: his frequent recommendations to the proctors, to proceed in a *summary way*, and with the utmost expedition, and to avoid multiplying, if possible, the number of courts, beyond the stated course and practice of the court [See App. No. 9,

10, 13, 14.] must certainly clear him from an odium so undeserved, so base, and so injurious, and at the same time, he hopes, so evidently contradicted by his daily conduct in private life.

If Mr. Laurens's property was unduly seized, the same has been legally restored, by the most condescending attention to every circumstance of equity; and that too with *singleness of heart*, without one false bias, and free from the fear, favour or influence of any person upon earth: and though the subject has not been restored to him with that *liberality* which he seems to have expected; and the judge has rescued the officer from the *destroying gripe* and *iron hand* of our remarker's justice; no man can be sorry, that his foresight and penetration have stept in between *vengeance* and the *party*, who gives himself one moment to reflect, what slender hopes of mercy and compassion the *man* would have received, if our author had been left to administer relief.

Page 36 contains very little worthy of remark, unless it be, that the statute 38 *Edw. 3. ch. 8.* was not noticed by the judge, and perhaps for the best reason in the world, to wit, that it had no relation to the case. The judge's expressions, alluded to in page 36, concerning the conduct of *some officers*, had relation to *other persons*, the prosecutor not being comprehended by any means in that particular

particular observation, or the object of the judge's censure; and therefore we are supplied with a reason, why he should be excused from any inconvenience, on the score of a mere suspicion arising from the conduct of *some other persons*.

I beg the reader's attention to page 36, which relates to a prosecution in which Mr. Laurens had no interest or concern, wherein it will demonstrably appear, that this man's aim is, to defame and lessen the judge's character, at the risque of his own honour and reputation as a man. The decree recites, that "*there is not the least shadow of pretence, that the said vessel has, at any time, been employed in any illicit trade whatsoever;*" and the last remark but one in this page, where the author argues the case in a superficial way, says, "*in this case, where there was neither shadow nor pretence for making a seizure:*" Observe how the terms are converted from the judge's declaration, that "*there was no shadow or pretence that the vessel in question had been employed in an illicit trade,*" to this favourite purpose, that "*there was no pretence for making a seizure;*" which subtle alteration works a most dangerous effect; for, though the vessel might be free from such a charge, and for that and other reasons restitution be decreed (all which is perfectly consistent; yet the case is widely altered, when the judge (by our author's changing

changing the phrase) is made, by an artful trick, to say, that "*there is neither shadow nor pretence for making a seizure*;" because it is impossible for any man to read *these latter words*, without an astonishment that probable cause should be certified, in the very face too of a declaration *that there was no pretence for the seizure*; and but for this fallacy, the whole is perfectly consistent, because a vessel may not have been ever employed in an illicit trade, which circumstance (added to the innocence of her present voyage) argued in favour of the owners, and therefore restitution was decreed: but on the other hand, if the judge is made to say, that "*there is no pretence for the seizure*," no man can possibly concur with the certificate of *probable cause*, the contradiction is so gross, and the declaration, and the subsequent act, so opposite and repugnant to each other. However, Mr. Laurens is guilty of another imposition, in every sense equally unfair, unpardonable, and unjust: he puts into the judge's mouth the following words, "And there is not (adds his honour) *the least shadow or pretence, that the said vessel has, at any time, been employed in any illicit trade whatsoever, whereby his Majesty's revenue can be diminished, &c. contrary to any of the wise provisions of any of the revenue laws, or laws of the customs*; therefore I do think, *there was a probable cause of seizure, and do order* the

the claimant to pay all the taxed costs of suit." By this artful arrangement of the words, those who read the book, must despise the judge, and his reasonings, and all his judgments and decrees. Reader, stop one moment, and take breath. Refer to the 5th line of page 38, 'till you come to the word "*therefore,*" which brings you to the *decretal term* of restitution, then you will perceive, that the judge begins a new and independant sentence, in the words following, to wit, "*And as I think there was probable cause of seizure, &c. I do order, that the claimant do pay, &c.*" This artful transposition of the judge's words, or change in the genuine arrangement of them; this gross substitution of words of *one* import, for words of a *different* import; is one of the most scandalous attempts which ever disgraced any man, since the confusion of languages, or the formation of letters.

A robber picks my pocket, perhaps he wants what I possess, and which I do not stand in need of; the injury ceases with the loss of a *specific sum*; there the *evil* stops: But the *suggestio falsi*, and the *suppressio veri*, may work an injury to the reputation of an honest man, which the future life of such a *miscreant* may never be able to atone for.

" Good name in man or woman -----

" Is the immediate jewel of their souls.

" Who steals my purse, steals trash: 'tis something; nothing:

" 'Twas mine: 'tis his; and has been slave to thousands.

" But he that FILCHES from me my good name,

" Robs me of that, which not enriches him,

" And makes me poor indeed.

Oh shameful! and absurd! that our author should talk of *logical inferences*, grounded upon such abused premises; and dare to prostitute the name of *logic*, who is ignorant of its meaning, beyond the short terms of explanation, which his *Dyce* or *Bailey* may give him, in their mere catalogue of words.

He informs his readers, in the same page, that the *circumstances* of the schooner *Active*, which the judge seems to mention as motives for ordering restitution of the vessel and cargo, were exactly the *same*, as the *circumstances* of hundreds of *small vessels* in Carolina for *four score years* before that experiment was tried upon the *Active*. It is a pity, that he set up as a candidate for fame out of his *own element*: it is a pity, that he did not distinguish to his readers, that the statutes whereon this prosecution was grounded, were enacted in the reign of his present Majesty: and therefore the precedent of *eighty years*, must yield to those alterations which the Legislature from time to time sees fit to make on past experience: arguments therefore of a practice before the interposition of a law to regulate *such practice*, are not more *despicable*, than they are *unapplicable* to the point in question; “*for, where there is no law, there can be no transgression.*” I shall close what I have to say on this subject, with a single observation, namely, that the vessel was within the words of the act of parliament;

ment; that a literal and slavish expositor might, and probably would, have condemned such vessel: and it is astonishing to the last degree, that he finds fault with a *decree*, which several lawyers here, some months after, confirmed by their written opinions, which the *author*, in conjunction with other merchants in this town, obtained, as I believe, and which were printed under an extract from the very decree, in a book, intitled, “*A representation of the conduct of Daniel Moore, Esq; collector:*” which extract and opinions are therein referred to, in order to manifest the undue conduct of the officer on *that* particular occasion; however, it is convenient at this time, for Mr. Laurens to *cast dirt*, and he is ever steady to perform an office (the only point of consistency in his conduct) which the honour of other men restrains them from accepting.

Page 39 again hints at the term *mercantile patriots*, in order, I suppose, to rivet an idea in the minds of the merchants, that the judge made use of that phrase in a kind of *sneer* or *derision*; but he assures them, that he uttered it in no such stile. And though Mr. Laurens boldly asserts, that the simple factor denies what gave rise to the judge’s observation, he apprehends, that in *this*, as in many *other instances*, he *presumes* too much; because I can with truth aver, that the judge’s words, on that occasion, were warranted

tanted by the information which the *factor* very innocently gave him of his own accord.

Our author's recapitulation contains scarce any thing worthy of an answer; most part thereof having been already fully handled in the preceding sheets. One observation however occurs, upon the following lines of our inimitable critic: "*Nevertheless,*" says he, speaking of the schooner *Active*, page 42, "*his honour thought there was a probable cause for the seizure, and the innocent owners were, by that unlucky thought, loaded with a vast expence without remedy.*" Strange! that any man will attempt to reason on subjects without learning or ability: for it is plain, to the most common and unbiassed understanding, that this seizure was a subject within the letter of the statute; and consequently the *probable cause* depended upon the act of parliament, and can, on no score, be resolved into *any unlucky thought*, arising from the mere apprehension of the judge himself, independent of the statute whereon the prosecution of the schooner *Active* was particularly grounded.

When a weary traveller has, with manly fortitude and patience, passed over bleak mountains, and penetrated through toads almost inaccessible by human skill; when he has toiled through many a *dark* and *dreary path*, under all the difficulties which man can labour, without aid, or succour, com-

pany, or refreshment; and at length spies out the end of his destined journey; what *extatic raptures* must fill the bosom of this weary pilgrim! past toils and dangers lose their horror on reflection, and we spring forward, with invigorated force and strength, to the last stage of our *painful travel*. These are *my feelings*, after a tedious journey thro' forty-two pages of a *dull, confused, deceitful, wild and incoherent book*: the *desarts of Arabia* faintly figure out the disordered variety which crouds this author's work: it is a performance in a state of nature; the *soil* produces nothing grateful to the *sense*; not a *rose* spreads its sweet *perfume*; *thorns only* and *briars* grow with *insolent luxuriance*: but painful as the *drudgery* is, I chearfully proceed, not doubting but my pen will soon dissolve the charms of our *austere magician*, and conduct me from these troublesome researches, to a sweet acquaintance with the *musés* and the *graces*.

Our author's reflections, arising from a *retrospect* of a *late case*, bring up the rear of his mighty forces; *shreds* and *odd ends* of sentences tacked together, like a *Harlequin's coat*, and set out with a shew of pomp, in the manner of the poor apothecary's shop in *Romeo and Juliet*.

"----- About his shelves

"A beggarly account of empty boxes,

"Green earthen pots, bladders, and musty seeds,

"Remnants of packthread, and old cakes of roses,

"Were thinly scattered, to make up a shew."

Such

Such materials, in the literary way, *deck* out the wide-extended plan of our author's *labours*. Seven long months from the promulgation of this decree, has the *amiable* Mr. Laurens been weighed down with this astonishing brat! 'tis a world of pity, that he could not contain this *child* of his *imagination* a *few weeks longer*, that, being properly ripened and matured, it might have grown to *perfect stature*: cruel case! that the *first offspring* of his *brain*, should come into this "*breathing world before its time, scarce half made up, with numberless infirmities about it.*" Pity that, when it was quietly seated upon our author's *pineal gland*, it did not keep its station: and more pity still, that this *unripe fruit* has so early dropt, thereby discovering, not only the imbecillity and weakness of its natural parent, but also its own *monstrous and abhorred deformity*.

It is impossible to answer a catalogue of *little sayings*, grounded upon the subject which has gone before and been fully replied to: as well might our remarker have put together a number of *smart proverbs*, a few *riddles*, or such like *flowers* of the *minor poets*, and so left it to every reader, according to the bent of his fancy, to make the application. However, as one reflection respects a judge of the admiralty, who sits independent of the office of attorney-general, I beg leave to refer my readers to [See *App. No.*

No. 23] a letter which I wrote to the lieutenant governor so long ago as the 17th day of July 1767, by which it clearly appears, that the judge, willing to retire from his *seat*, took the proper steps for that purpose, and actually wrote to his friend in England, inclosing, at the same time, two certificates which he obtained from his excellency the governor and his honour the lieutenant governor [See App. No. 24, 25.] in order to pave the way for a resignation of the place, when a favourable moment should present itself for that purpose; and every one knows, that a resignation *here*, must have given great offence to administration at home, who had lately supported me against a complaint of the commons house of assembly, on account of a *supposed incompatibility* between the two offices of attorney-general and judge of the admiralty; and the reason which one of his Majesty's ministers gave to one of my friends for that support, was, that "*Mr. Leigh had faithfully acted up to the duty of his station, as an officer of the crown,*" and therefore any determination on that point was then postponed to a future day.

The assembly confined their complaint solely, to the inconvenience which, they apprehended, might arise from the union of both those offices in one person: they did not attempt to insinuate the least circumstance to my discredit: and whoever gives
himself

himself leisure to reflect, will call to mind, that this affair happened at a time, when the passions of men were much *heated* in *this* and every other province on the continent : and therefore it cannot be supposed, that the assembly would aim at the *office*, and suffer the man to escape animadversion, had his public conduct made him liable to censure. A complaint against him for partiality or injustice, must have given additional weight to the application for dis-uniting these employments : let it be considered *also*, that it was not a time, for them to be influenced by a false tenderness or compassion : this conclusion therefore may be fairly drawn, that my character, as a public officer, was free from spot or blemish. I know that my politicks were disliked, but that circumstance is no impeachment of my honour. The above certificates point out likewise pretty clearly, that I was not altogether the *ignorant* or *partial judge*, which the author's libel gives the world to understand : and it is no unfavourable circumstance, that, after having presided upwards of seven years in the court of vice-admiralty, and determined divers cases of great value as well as intricacy and doubt, that not a single party has prosecuted one appeal ; and in every instance where an appeal, during that space of time, has been exhibited in the first sally of disappointment, the same has either been formally

mally withdrawn, or absolutely deserted. Add to these observations, that I am nearly arrived at the *viginti annorum lucubrationes*, which *Fortescue* speaks of, and that I have been near sixteen years in considerable practice at the bar, there can remain, it is hoped, very little doubt, but my ability was equal to the cases which have induced our *merchant-lawyer* to turn judge: but these points are humbly submitted to the reader's own reflections. One observation of our author's, in the last page but two, exceeds the *truth*; for the judge charged no officer expressly, as being guilty of the crime he insinuates: he took offence indeed, at Mr. Hatley's answer to one of the interrogatories, and deemed the same a manifest contempt, and obliged him to purge it by a suitable submission.

The consolatory address, which Mr. Laurens supposes to be uttered by the judge to the dangling officer, must be considered as the last effort of the man before his dissolution: but as it is one thing to rail, another to accuse; as we must be tried by proofs, not *fictions* or the *airy phantoms* of the brain; it is sufficient merely to observe in general, that our author's *book*, is a master-piece of *dissimulation*, mingled with *invective*, invidiously contrived, to *amuse, alarm, and to deceive*.

On the 17th of September last, the judge surrendered his commission, agreeable to a notification

notification from government previous thereto, that his Majesty's service might suffer by the union of the two employments, of judge of the admiralty and attorney-general, in one person; an intimation long wished for by that gentleman, and most cordially received: the phrase therefore of *surrender*, page 5th, suits the case, and is a word as agreeable as the term *resignation*, which Mr. Laurens in a kind of *sneer* supplies, by substituting the former in its room. Government thought fit to disunite these two employments, and were pleased to leave the choice of *resignation* to myself.

In this place it may not be improper to observe, that Mr. Laurens's first quotation, in his title-page, contains, in italicks, the words *volunteer judges*, alluding, I suppose, to those who offer themselves for such employments when vacancies arise. Allow the fact, and I see no imputation which justly flows from it: and if it is considered, that our present lieutenant governor, who was in the administration at the time of Mr. Rat-tray's death, cordially appointed me; that he is a gentleman of worth and abilities, and would never suffer any private attachment to interfere with the duty of his station; his appointment, I hope, will afford the world no just cause of dissatisfaction or complaint; the presumption being, that he truly thought the person, at the time, equal to the trust: for

for my own part, I consider his nomination of me to that post, as a mark of honour, independant of the office, as being conferred by a man of probity and parts; for those two circumstances ever give to the person appointed a *durable stamp* of *merit* and *regard*, which, in this instance, I trust, neither our author's extracts, nor his future labours, will be able *finally* to wound.

There remains only one point more to be discussed, as arising from Mr. Laurens's remarks. Whatever objection he has taken to Mr. Roupell's *ex parte* oath, the same being altogether *extra-judicial*, the judge of the admiralty, as such, had no concern therewith; and consequently, whether he spoke truth, was not a question examinable by the judge (no cause being then in court) wherefore it can be no matter of surprize, that he met with no judicial reprehension. As to Mr. Hatley, many circumstances concurred, to induce an opinion that he meant no ill: he unluckily was taken by surprize in open court, when the evidence was published, and was questioned with much severity, concerning an appearance of contempt, which his answer to one of the interrogatories disclosed: as a young and inexperienced man, the judge, though offended, sympathized with him for his alarming situation; and he was required to answer the interrogatory *de novo et instantèr*. The event of the
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suit did not rest upon his evidence alone, and the court, being convinced that he had no interest in the subject in dispute, and could have no inducement to commit a *barefaced perjury*, did, in tender compassion to his years, forbear to exercise their full rigour against him; and the rather, as inattention, more than design, had led him into an embarrassment, which an *inquisitor* might have availed himself of, to gratify an *arbitrary passion* of resentment. However it was tho't a point of some concern, to stigmatize a raw young man *unused* to forms of court, to ruin his future reputation and success, and to blast every succeeding year of his life, by a public act of censure; such a proceeding seemed to me to savour of *cruelty, rigour, and oppression*: if therefore any part of his conduct merited severer treatment, the judge erred from a principle of humanity, tenderness and compassion; which, in some natures, take so predominant a lead, that these virtues may perhaps sometimes, by their excess, degenerate into faults, and involve the person in absurdity and error, for in benevolent natures the impulse to pity is often so sudden, that, like an instrument of music which vibrates to the touch, it works an immediate and instantaneous effect. The world will not however bear hard in such a case: *mercy* is a glorious part of the divine nature, and our most correct conduct will have occasion for all the

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dispensations of that *heavenly attribute*: let any man figure to himself an austere and rigid judge, exercising despotic rule like an Eastern prince; fancy that, under the colour of strict justice, he feels for no man's sufferings, nor allows for human weakness; the picture is *horrid*, and to despise it we only want to *see* it.

It is plain, that Mr. Laurens is for crying aloud and sparing not; he is for wielding and exercising the two-edged sword which does *double execution*. If his scheme of justice gives him any pretence to superior notice, it is much to be feared that the world will be deceived; for, if he is an *angel*, he is one of those who destroy *without mercy* at noon-day.

Let the world traduce me for my lenity, tenderness and forbearance, and my heart will reconcile the censure, by the overflowing and abundant comforts which pour their aid into my soul, when I reflect, that the God whom we serve is *merciful* and *gracious*, *long-suffering* and of *great kindness*.

As to the stile and manner of our author, it is, if possible, more injurious than his bold assertions: for, by the aid of *Italicks*; by an artful and scarce perceivable alteration in the arrangement of my words; by torturing particular expressions; and separating sentences, which, being taken together as parts dependant upon and connected with each

other, make the whole perfectly consistent; by the artifice of sneers interspersed here and there; by wire-drawing certain words, supplying conjectures where *facts* fail him, multiplying insinuations without end, and introducing scraps of sentences which bear no other relation to the subject than as being incorporated with it; by arts like these, has Mr. Laurens (with an industry peculiar to himself) so disguised the truth, that it requires some little attention to discover the deceit.

The manifest tendency of the work is, to expose the judge, at any risque; and the design has gained so great an ascendant over our author's mind, that his book fails to supply us with one single benevolent construction or charitable allowance. He looks only at the dark side of every thing; and fits his imagination for the reception of monstrous and unnatural ideas, to his dishonour as a *Christian* and a *man*. If we are determined to view every matter through a false and deceitful mirror, to deform the fair aspect of truth, and give to *falsehood* the *semblance* of it; the reputation and character of any man (be his life ever so exemplary) must stand upon a perilous foundation: the most sacred institutions may be represented as idle and absurd, and there have not been wanting men who have dared to ridicule *holy writ itself*: not a text has escaped *torture*, and the most

important truths of our holy religion have been made, by the subtle artifices of men, to speak in a *strange tongue*. Such writers are the scourges of mankind; they create unreasonable jealousies, teach men to *suspect*, 'till they learn to *bate* each other, raise unnecessary fears and scruples in the mind, sound the most dangerous alarm, and by destroying, as it were, the original principle of social and benevolent affections, lead us unwarily into a state of warfare with each other: they slacken the powers of the soul, and, by their baneful influence, disunite mankind, 'till, by insensible degrees, the *due tone* thereof is altered, and each man finds himself a *brute* in *human shape*.

In this state, we may perceive that the different orders of men are confounded together: each person derides the other, according to the various turn of their thoughts, in all the wantonness of a distempered fancy; drunkards laugh at *sober men*, and sober men at *drunkards*; physicians, lawyers, priests and free-thinkers, are the standing subjects of ridicule to one another; the wise and the foolish, the virtuous and the base, all give and return the *jest*; and, in short, every man is more or less governed by *prejudice* or *passion*: every thing is subject to disguise; the ensigns of state, the judge in his purple robe, the bishop in his lawn sleeves, a general at the head of his troops; all the virtues and
graces

graces which can *captivate* the heart or *adorn* the man, may be rendered *ridiculous* and *absurd*; for only disguise any one of these persons or qualities, by concealing, varying, or adding a circumstance that may strike the *fancy*, and they instantly assume *new shapes*, *new names* and *natures*.

Thus the virtues (as Dr. Brown says) when seen in a direct light, attract our admiration by their beauty; but, when beheld through the oblique mediums of ridicule, start up in the forms of ideots, hags and monsters: thus it happened to the divine Socrates, who was ridiculed by the poet *Aristophanes*, and by the wickedness of his art rendered an object of contempt: but the *truth was*, that this Socrates described by the poet, was so disguised by fiction, that it was only the same name given to a different character; he was not the *divine moralist* and *father* of antient wisdom.

The reader will please to recollect, that he was, in the former part of this performance, referred to certain letters [See *App. No. 4, 5, 6, 7, 8, 9, 10, 11, 12.*] from Mr. Laurens, which he wrote in all the genuine stile of friendship, many months after the determination of all the prosecutions (except that of the ship *Ann*;) and the conduct of the gentleman will, it is hoped, appear *equally absurd* and *mysterious*, in the present instance,

instance, from the papers which are now referred to in order to support the charge.

The judge pronounced his decree on the 9th day of July last, when he took occasion to enter very largely into the merits of *this*, as he had all along done in the former cases; and a few reasons, selected from his general arguments, he set down in the decree at large: the judge observed, in open court, that appeals having been lately preferred in some former cases (a freedom which he thinks favours of an affront, when the appellant neglects to prosecute the same) he therefore, being desirous to convince the world, that it is ever his steady aim to act the upright part, and professing himself to be an enemy to *authoritative decisions*, which, by the way, a crafty and designing judge will best approve, condescended to give the grounds and reasons of his judgments. Whether this candour of the judge has been properly *requited*, must be submitted to those, who will take a moment's trouble to reason in their own minds upon a plain and simple fact, unencumbered with doubts, and from which as clear a proposition arises, and as evident a solution, as can be found in any of the books of Euclid, to wit, the judge, without the least reserve, disclosed his whole reasoning upon the case of the ship *Ann*, in the presence and hearing of five hundred persons: few judges leave themselves so open to the
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cavils of mankind; therefore it must be doing violence to common sense and understanding, to suppose, that he had any thing in view but to do impartial justice.

The prosecutor exhibited an appeal from the said sentence on the 11th of July, and prayed, that a further day might be assigned him, to procure sufficient and satisfactory security to prosecute the same, and the court assigned the 21st of July for that purpose: but no security being then offered, the appeal was not admitted by the court.

It is now time to conduct the reader to a most curious *petitionary letter* [See *App. No. 27.*] from the writer of the extracts, which the judge received on the 15th of July, six days before the time fixed for Mr. Roupell to stipulate as is above stated. The judge's answer is likewise added. [See *App. No. 27.*]

Can any man persuade himself, that Mr. Laurens was offended with the judge for his decree, which he had pronounced only *four* days before? or, can they reconcile resentment, to the *humble* and *supplicating* stile of his petitionary note? is it not more natural, to conclude, that he meant only to vindicate his own character, and for that purpose, to publish a suitable detail of the case, in order to remove any suspicion which might be industriously whispered to his prejudice, whereby his reputation, as a merchant, might be drawn into question? If the gentleman con-

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tends, that his resentment was in a *boiling state* against the judge, he proves himself to be a *notable adept* in the mysteries of disguise. How *formal* his address; how *guarded* his expressions; how cautious he is to save himself from even a *suspicion* of contempt of that *honourable court*! and with what amazing deference he *hands*, to this partial judge, the name of *Henry Laurens*! Now, if any one can in charity suppose, that he really intended to publish such a work as the world is now possessed of, they make the matter *worse*; for then, this *gentle note* was modestly intended as a *sly persuasive* argument, to induce me to give a sanction to a proposed work, having the semblance of what was *not amiss*; under a *disguised* intention of doing what really *was amiss*; but observe the *impudence* of this *hypocrisy*, and the author must be an object of our utmost detestation. He presents himself on paper, in a *smiling* and complacent stile; and as a *respectful* petitioner, implores his honour the judge, that he will give him authority to publish a *scandalous libel* against his own *decisions*. There is not a *foolish constable*, or a *licentious leader* of a mob, in the works of Shakespeare, or an *illiterate buffoon* on the records of dramatic composition, who furnish such a barefaced and insolent request. This is a *master-stroke* in the conduct of our author; which puts me in mind of our inimitable poet

poet just mentioned, who gives a fine picture of a *saint-like hypocrite*.

- “ But then I sigh, and with a piece of scripture
- “ Tell them, that God bids us do good for evil :
- “ And thus I clothe my naked villainy
- “ With old odd ends stoln forth of holy writ,
- “ And seem a SAINT, when most I play the DEVIL.

The judge's note is, I hope, decent and proper on the occasion, and stands in need of no comment to explain it : but that my readers may be entire masters of the *whimsical* humour of our author, I can by no means forbear to give them an extract [See App. No. 28.] from his reply thereto. The rules of decency forbid me to publish the whole, and the rather, as it contains matter foreign to *this* point : however, it is necessary to observe, that the other *parts* of the *letter* are *gross* and *virulent* to the last degree.

The world, with *all* its follies, can scarce equal *this* ; and it is hardly credible, that a man should, in one view, represent a judge as *partial*, and in another situation wish to have him for *his counsel* ; *abuse* him, and say he did not *mean it* ; *libel* him, and ask his assent to the publication of it ; if we did not call to mind *Solomon's fool*, who, in a frolicsome and *filly* mood, cast *fire-brands* and *arrows* and *death*, and cried “ *it is in sport*.”

The judge however vouchsafed an answer to this extraordinary epistle [See App. No. 29.] wherein it appears, that he adhered to his first note (for as he never writes without *deliberation*, there was no room for a change.

of sentiments) and discovered a tenderness for Mr. Laurens, which it had been well if he had consulted in favour of his friend; and he likewise scorns what he, page 3 of his reflections, calls *coaxing*, by declaring in express terms, that he had nothing to fear from any *publication*, but every thing to *hope*, and therefore left him to his own guidance and direction. This temperate answer tended only to enflame our author, and produced so astonishing a letter, that the judge rather considered him as *mad*, than *wicked* through the perversity of his will; and on that *score*, in the most calm and cool terms, returned him an answer [See App. No. 30.] wherein he trusts that he has preserved his honour as a *judge*, his *moderation* as a man, and his forbearance as a *friend* to one whom he was allied to by marriage with his niece, and with whom a close intercourse of friendship had for many years been kept alive.

This strange correspondence was closed before the meeting of the court of admiralty, on the 21st of July agreeable to an adjournment, for the purpose of taking Mr. Roupell's stipulation to prosecute the said appeal. Perhaps there are few judges whose temper and discretion would have influenced them to act so tenderly, after the many repeated insults which he received at the hands of Mr. Laurens, and that too previous to the certificate of *probable cause*, which was completed

completed on the 21st day of July only, and was subsequent to the date of our author's letters, though he expressed indeed, at the time of pronouncing the decree, that he should *certify probable cause*.

Such letters favour strongly, of an attempt to deter the judge from his proper duty : and the author might have smarted for them in the hands of a less temperate man.

That people in general entertained no such unfavourable impressions, either of the judge's conduct or justice, one of our most popular printers, in his account of the decree, subjoins these words, "*every court held upon this cause of great expectation was remarkably crowded, and the equitable decree of the judge seems to have given general satisfaction.*" I do not, by any means, contend, that the ideas of all men are centered in those of the printers ; but it is not too much, to suppose, that the general opinion, so far as he was able to collect, spoke the language of his paper : such flagrant injustice as the author insinuates, must have affected every hearer ; for, though all were not lawyers, yet most men of tolerable sense have the general rudiments of justice seated in their hearts, sufficient to point out to them any glaring acts of injury or oppression : but, to confirm the printer's opinion, *James Parsons, Esq;* one of Mr. Laurens's counsel, having some occasion to call upon the

the judge, about an hour after he pronounced his decree, took the opportunity, in very warm terms, to compliment him thereon, by assuring him, that both Mr. Pinckney and himself had conversed together on the subject, and they agreed with the judge, in his construction of the statute on which the information was grounded (though in their arguments they contended for a different one) and he also intimated to him, that he believed it was a very just and equitable decree, and that no persons, unless the parties themselves, would be dissatisfied therewith. The judge, no doubt, received this account with pleasure and satisfaction; and nothing surprised him so much, as to hear afterwards, that Mr. Laurens had conceived a different opinion; many people likewise expressed the same astonishment, and were at a loss to account for the cause of our author's discontent.

That people were, in general, impressed with very favourable notions of the equity and justice of the judge's decree, appears still further, by a republication of the decretal part (as taken from Mr. Timothy's gazette, which likewise contained Mr. Laurens's state of the case) in a Boston paper of the 15th of August last, wherein some person, under the name of *Publicola*, makes honourable mention of the judge and his decree; [See *App. No. 30.*] but to whom he is indebted

debted on the occasion he is altogether a stranger, having scarce any acquaintance in that quarter. Now, were we on the regular trial of a reputation, such loose scattered evidence would not avail : but if we consider the nature of the present attack, that it is made by Mr. Laurens (a part owner of the vessel) ; that he is a merchant, and therefore to be supposed little skilled in the deep science of the law ; that his direct aim is nothing less than the ruin of a whole family, upon his *own apprehensions* of law and justice, upon *surmises only*, and the most *foreign and unjust conjectures* ; and no man surely will admit Mr. Laurens to give evidence, without receiving the unbiassed testimony of an indifferent person in favour of the judge's sentence : as both are equal in point of consequence, so the declaration of the one, may properly be opposed to that of the other.

In the present case, and also in that of Mr. Moore, the judge of the admiralty tho't it prudent to lodge a true copy of both decrees in a friend's hand in London, as he had reason to suspect the parties would misrepresent the cases, either through ignorance or design ; and he has in his possession, letters acknowledging the receipt of those decrees, which speak of them, from the mouths of certain persons of the first rank, in high terms of honour and respect, and nothing but the want of their permission withholds the

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judge from publishing their names as well as their words.

The book of extracts and remarks, which deals forth half-truths diminished or exaggerated, is a performance without exception grounded upon an open principle of malice; and every one who reads it must naturally suppose, that the author had exhausted his store of scurrilous invective, that the measure of his wrath had been abundantly supplied, nay, that it had been pressed down and running over, and therefore we could not reasonably expect to see any thing more from the pen of this plodding author; the gentleman however, encouraged perhaps by some short-sighted correspondent, that his scraps might bring about some regulation in the proceedings of American courts of vice-admiralty, became inflamed with the idea, so enraptured with the thought, and so transported, that he should be the happy instrument of working so great a reformation, that he sent a most extraordinary paragraph [See App. No. 32.] to Mr. Crouch, which was inserted in his paper No. 169, dated the 28th of February last, about five days after the publication of *his shameful book*. The author makes the merchants of Bristol speak a language, concerning the proceedings and sentences of one of the King's judges, as would fix both odium and disgrace on any private person. *A little obscure man in South-Carolina*

lina, transmits an *ex parte* detail, of what he does not understand, to some merchants in the city of Bristol; and they, according to his account, relying solely on his relation of the matter, without enquiring further, without any opportunity afforded the judge to be heard upon the subject, become instantly inspired with a sense of his baseness and injustice, and thereupon determine, to pursue such measures, to make a full representation of the whole of that iniquitous affair, as will probably bring about some regulations in these courts. No man, in his proper senses, can entertain such dishonourable thoughts of so respectable a body; such expressions can only be applied when facts are proved: God forbid, that a judge, or any other man, should be tried by the proudest corporation in the kingdom. I respect all bodies and societies of men, and I honour every person when he supports the duty and character of his station: but if an aggregate body of men depart from the eternal laws of justice, I am bold to deny their authority, and to question their proceedings; I instantly entrench myself within the laws of my country, and standing upon that ground, with a good conscience and a strong conviction of the integrity of my heart, I challenge the whole world to begin their attack with all the fury in their power, for, when a fine sense of honour, and an inward consciousness of virtue,

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such as ought ever to distinguish the judge's station; when justice, truth and equity have steeled the mind on *every side*, we are invulnerable on *every side*: I am not to be moved or alarmed by numbers, or the pageantry of state: if the merchants of Bristol have gone so far as our author represents, they have not, in my poor opinion, acted a wise or becoming part; and I shall be induced to agree in sentiments with my lord Bolingbroke, in one of his letters to dean Swift, that "*all corporations of men are perpetually doing injustice to individuals. I have often reflected (continues his lordship) from what cause it arises I know not, that the majority of a society are honest men, and would act separately with some humanity and according to the rules of morality, yet conjunctively they are hard hearted — in short, there is no corporation to be excepted out of this general rule, but the two houses of parliament, and all assemblies of divines wheresoever dispersed through the Christian world.*" Notwithstanding the great authority in support of such a sentiment, I cannot persuade myself of the truth thereof, in the generality of his lordship's words, and therefore it is firmly my opinion, that as the man would shipwreck the judge's reputation, so to gratify his darling passion, he would put any words whatever into the mouths of the Bristol merchants, who certainly will (in this age when the love of de-

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ceiving a man's self is so favourite a passion) send their friend Mr. Laurens the freedom of that city, in a *gold box*, with an elegant English inscription suited to the subject. Whether our author has *dieted* properly, so as to entitle him, at some future day, to any *rank* in the *city*, is rather foreign to my present enquiry: I shall therefore add a word or two, upon the base tendency of the paragraph itself; as also consider the *author's patriotism* by his *work*; with a few observations upon the term "*liberty of the press*."

Anger and resentment, malice and revenge have clearly taken the dominion of our author's soul; and his conduct has discovered a weak and impotent mind, tossed to and fro by every spire or gale of the passions, without the least aid of reason to *controul*, *regulate* or *direct* them. In order to compass the favourite point which he has in view, (the ruin of my reputation, peace and happiness) he hangs me up, as it were *in chains*, as a spectacle to all mankind; he endeavours to persuade the world to combine and confederate against me; he publishes my disgrace, upon his *own testimony*, circulates it through the channel of a news-paper, thereby outlawing me as it were, *without trial*, *without process of law*, against *magna charta* and every valuable right which the *meanest* subject in his Majesty's dominions glories and delights in. This is the tendency of his

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book, and the above scrap of intelligence is the confirmation of it. When we feel a stone, we conceive an idea of *hardness*, when ice of *coldness*, when fire of *heat*; but the man who studies himself, regulates his mind, acts the philosopher by acquainting himself with himself, looks down with a noble contempt upon the common accidents of life, and the persecutions of wicked men, and *feels* those impressions *only*, which not the *qualities* of these things, but of his *own heart* communicate to him. The bulk of mankind would yield perhaps to the attack of calumniating tongues; but when the records of the soul, those eternal monuments of truth, make a fair report, the ignominy which slander would cast upon such a man, so inwardly fortified, and so gloriously supported, remains with the person who *persecutes unjustly*, not with *him* who suffers a *wrongful persecution*: such injuries strengthen a wise man's mind, he grows majestic and intrepid in misfortunes, and if by cruel combinations, or the tyranny of power, he falls from an exalted station, he becomes, like *the temples of the Gods*, *venerable even in his ruin*.

I have been told, that some men have looked upon our Author's pamphlet with an eye of favour, as attributing the design to a *worthy motive*; and a few persons have been idle enough to believe, that Mr. Laurens was induced to take up the pen upon a public

lic principle; in order to get rid (if possible) of a court, whose jurisdiction is said to be extended beyond its *proper limits*: if these were his views, the *means* are ill adapted to the *end*; for it is one thing, to arraign the justice of the judge, and another, to attack the constitution of his court. The latter point stands independant of the former, and it was by no means necessary, to *pillage* the judge of his reputation, in order to establish any position which respected the jurisdiction of the admiralty court. When seizures are made, and prosecutions commenced by the proper officers, the judge is presumed to be totally indifferent to the parties in dispute; charity supposes likewise, that he is influenced only by an awful sense of his duty, since his justice is secured, as it were, by the solemn obligation of an oath: and tho' a particular jurisdiction may not be relished universally by the subject, it by no means follows, that the person who presides therein, is lost to all sense of *honour*, fidelity and duty: the *personal attack therefore* proves demonstrably, that the author's motives do not spring from a genuine and *uncorrupted* fountain; that it is *not patriotism*, but *private pique, malice and revenge*, which have prompted the measure: for, grant that every one of his remarks on the several decrees are unanswerable, what does the fact truly prove? *the injustice of the judge*; but it can never o-

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perate as an argument, that the court itself should be abolished; as well may we contend, that the conviction of a *Lord Bacon* and *Lord Macclesfield*, for corruption, or mal-administration in the high court of chancery (where the chancellor is a sole judge) should influence the legislature to take away the power of the court itself, as to say, that the error or injustice of a judge of the admiralty is a reason for abolishing his inferior jurisdiction. The abuse of power, is no argument for withdrawing it altogether; in this state of imperfection, every institution will necessarily partake of the general infirmity which marks all the works and most perfect operations of frail men. If the conduct of a judge renders him obnoxious, try him, and solicit his removal; withdraw the power which he possesses, and prevent him from all further acts of tyranny, injustice or oppression. When the *Corinthians* behaved themselves unseemly, upon a sacred occasion, their conduct was duly reprehended, and their evil practices were held in abhorrence and contempt: no human skill or policy can do more, either in reason or justice; evils demand remedies, but the existence of them in a state of society, is no argument, that mankind should resolve themselves into a *state of nature*.

From this view of the case, it follows, as a *concessum*, that the reasons which must induce

duce our superiors to abolish any particular institution, or order, cannot possibly be of a personal nature, but must immediately relate to the *thing itself*, and be independant of the ministers or officers who execute the duties or functions of their stations. The laws therefore which give the jurisdiction, and the policy and principles which prevail and govern the practice and proceedings, ought to have been the sole objects of our author's attack: had he pursued this method, confined himself to the constitution of the court, enlarged upon the rights of his fellow-subjects, pointed out defects, proposed remedies and amendments, treated the subject upon a large and comprehensive plan, deduced his arguments from the origin and foundation of our laws, shewed wherein our superiors had departed from first principles, discussed the evil tendency thereof, and asserted with manly freedom the peculiar immunities, rights and privileges of British and American subjects, the work might have been *useful*, as well as *entertaining*; and I think no person of common charity and good nature, much less any true friend to our happy constitution, would have dared to question the motives of the man; such labours must surely have been seasoned with a spirit of patriotism and public virtue; the manifest design of the work must have explained the writer's motives: but when we read a book *stuffed with bold and desperate*

desperate invective; when we find, upon a perusal of it, that the grand aim is, to prove the judge a villain, and two officers of the customs perjured; when to compass these ends, the author exercises every art of dissimulation, by looking on the dark side of every thing, drawing the most unnatural conclusions from fictitious premises, transposing words and uttering downright falsehoods; when the sentences of the *man* are traduced and blackened, and the court itself is only mentioned *by the bye*, and used as a *mask* to disguise the manifest wickedness of the writer's heart; every man makes himself an accessory to the facts, by giving countenance to the author of them. Let us try such cases by all the circumstances and *concomitants* which attend them; let us separate ideas, and suffer none to put a false gloss on others; and then it is impossible that we can remain long in suspense, what the true principles of his conduct are. The subject is wholly *personal*, it is altogether treated in that light; *revenge* is the burthen of the song. How then can any set of men persuade themselves, that *public virtue* is manifested by the gratification of private censure? how comes it, that more than three parts out of four of the human species, take delight in being duped and laughed at by the other? Let Mr. Laurens consult the movements of his soul, examine seriously the *state* of his own heart, *commune* with

with himself in secret, and be *still*; and if I have a single grain of judgment, he will either pass sentence upon himself, or *tremble* with horror, that he cannot deceive the *searcher of hearts*, and that a day will come, when *hypocrisy* must drop its *specious disguises*, and *truth* will assert his absolute controul. Can any one, who is at all acquainted with the *versatility* and *fickleness* of our author's conduct, or has traced him through all his *windings*, *slopes*, and *intricate meanders*, suppose that he is acting the part of a patriot, when he began the very work which is meant to establish that character, under the most inveterate fit of passion, anger and resentment? Is it possible for those persons, who have known him from a boy, and whose temper, they cannot but recollect, has ever been *violent*, *implacable*, *vindictive*, *obstinate* and *perverse*, to be led away by a few captivating words, and be so ready to yield up their understanding, judgment and experience, to an artful *conjecture* or *surmise*? Such men there are and ever will be (though I trust they are few in number) whose partiality to their friend, too often prevails on them to act, as they frequently do in their own private concerns, by avoiding an examination of *all accounts*, lest the stated *balance* should hurry on their *bankruptcy*, *ruin* and *disgrace*.

The late judge of the admiralty, or his sentences, are on no score subjects which
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can possibly engage the attention of mankind. Of what moment is our present dispute to the neighbouring provinces? how are *they* interested in or affected by it? what can Mr. Laurens mean by his cruel and intemperate conduct? He courts popularity, an idol which has been caressed by more scoundrels than men of honour since the flood, and which they have too often engaged to be of their party, merely to *veil* their own defects, *varnish* over their own foibles, and *depress* that merit which they cannot equal. If the difference then, is partial, personal, and local, wherein does the author's public spirit in the present case consist? From all circumstances, I am well convinced, that he flattered himself with an easy and a glorious triumph: he had some reason to hope, that the judge would treat his performance with contempt, and withhold an answer to his libel; hopes which, I doubt not, suggested to his mind such amusing sentiments, as, I think it probable, he uttered in the *terms* which I have already put into his mouth, by a soliloquy, tolerably adapted to the reasoning and genius of the man.

This *wretched author* has discovered, by his conduct, a certain degree of vanity, which is equalled only by his *invincible impertinence*. Upon the publication of the extracts, he sent them, as *presents*, to many respectable persons in England and America, by which fatal
step

step he has effectually published this doubt to all mankind, *whether his brutality, ignorance or folly* are most eminently glaring. Many cities are said to have contended for the birth-place of Homer; and more, I am confident would dispute the present question if he was a man of *eminence or weight*, tho' I have reason to believe, that the controversy will end in one general conclusion, against the author's principles and virtues, as a *subject, a citizen, a Christian, and a man.*

It is amazing to me, that his courage did not fail him in so great an enterprize. Mr. Laurens must know, that neither his *education, or first plan of trade*, which I do not mean to sneer at because it was *mechanical*, give him very slender pretensions to set up as a *dictator or reformer*; especially, when we call to mind, that there are many able men upon this continent, whose pens have done them credit, and therefore the colonies are not destitute of advocates to assert their rights, with more ability and force, than our extract author gives us reason to expect, from the specimen ushered into the world by David Bruce, the printer.

It is but of late, that I have suspected our author of *vanity and self-intoxication*; and as few people have met with *more sensible mortifications* than himself, my attention has been very much engaged, to determine the true cause and motive of his being so well

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satisfied with his own *slender* portion of perfection. After some farther study and examination, I have observed, that almost every man in town accosts him in terms of the most cordial salutation; the same people perhaps neither regard or respect him: but it may be said, how can this conduct be reconciled to their sense or understanding, or even to the forms of their address? in this dilemma, I instantly applied myself to find out their principle of action: they meet him, 'tis true, with pleasant countenances, because they *fear* him; they know that he never wages a dispute, but the *ruin* of his antagonist is the *motto* of his banner; and I will take upon me to say, that few men speak to him with freedom out of *love* and *esteem*, but because they are fearful to offend. If it be a man's favourite passion to wage eternal war, and with the same degree of bitterness, whether the cause of a dispute is a cargo of *rice* or a *barrel of pitch*, and that *hostilities* must at all events be carried on with the same vehemence, whether the subject be a *feather* or a *jewel*; every man, who tends his own peace and happiness, will naturally sacrifice many little points to a person of that *froward disposition*, nay, they will even *submit* to and *pamper* his humours, 'till the *man* himself is inwardly persuaded, that such concessions are the *tributes* of *veneration* and *esteem*.

Grant that the late judge has been mistaken in his law, in some part or other of his several decisions (though he is not conscious of it) the concession only proves the fallibility of human judgment; for, as Sir Edward Coke, in his argument in Wraynham's case, observes, "*if a man according to sincerity give judgment, though he differ from another judge, this is no injustice. The famous Dyer gave judgment in the common pleas, and this was reversed in the king's-bench, yet he discharged his conscience, and although it was afterwards reversed, yet it was no injustice. The King hath the pleas of the crown, and upon every judgment one of the parties is angry and displeased, but this must not produce a new hearing, for that will hinder all other businesses.*"

I come now to say a word on the *Liberty of the Press*. No man can deny that every subject in a free state, has, and ought to have, a right to examine, with a true spirit of *freedom* (but not to use the same as a cloak of *maliciousness*) all public measures, for the sake of giving due information to their fellow subjects, in points wherein their rights and liberties may be violated: but if there is a case which can possibly be considered as excepted from this general right, it ought to be that of subordinate judges; for, as the parties may appeal from their sentences, the injury, if any will be redressed in due time; but, if he is allowed to publish his comments on the transactions

transactions of a court of justice, the judge's office will soon become a burthensome employment, and such a species of liberty of the press will effectually destroy that constitution which it was intended to preserve. *Libertas non est licentia*, says Tacitus, that great friend and patron of liberty : vague and cruel reproaches, charges and criminations, tend only to provoke and inflame, against the very intent of printing, which is, or ought only to be, rightly to *inform*, as well as to *reform*. How then can any advocate of true freedom, take pleasure in reading a newspaper which contains so base a paragraph as that which has lately undergone our contemplation ? Is it fit or reasonable, that men of warm and turbulent passions shall vent their anger and resentment against others, in a paper calculated for the innocent amusement of mankind ? Shall it be said, that a court of justice ought to be exposed to attacks of such a nature, and through such a channel ? Does obloquy like this, promote the cause of truth ? Is the *decus et tutamen* of government to be assailed by petulance, or exposed to the casual and accidental prudence of a printer, who is in haste to give his readers a week's complement of news ? Shall such a person, in defiance of all law, pass unnoticed, and, instead of meeting with neglect, be countenanced, supported and protected ? Shall such a press be the *vehicle* for private slander ?

flander? Can any set of men agree, that one man shall have it in his power to insult the chastest virtue, defame the highest stations, reflect perhaps the most undeserved odium upon the fairest reputations? Shall no public services, no character in life, no public or private virtues, be secure from such attacks? Is the commerce between man and man to meet with interruption of this kind; are the transactions of life to be retailed out in such a way; shall a news-writer be invested with a power of declaring a judicial sentence *iniquitous, unjust*? Where is our liberty, when shipped on such a bottom? If this be the freedom of an Englishman, I am still a stranger to that constitution which we daily boast of. With what face can we contend for the glorious trial by jury, when each man empannels himself, to try, by his own unenlightened reason, the virtue, and the justice, which is surely the pride, of a righteous judge? I am no stranger to the people in this province; my best and most serviceable years have been spent *here*; and I can truly say, that I have not served my King more faithfully, than I have done my best endeavours to promote the welfare of the place, according to the extent of my capacity and power. Many of my actions, like many a book, have been read in a sense rather opposite to the text; and I am well convinced, that time will efface undue impressions,

and convince those who are in doubt, that my conduct has been upright, and my attachment to the province zealous and sincere. Let every man, without prejudice, calmly reflect on this divine precept of the Saviour of the world, "*all things whatsoever ye would that men should do to you, do ye even so to them, for this is the law and the prophets.*" Let the reader place himself in the station of the judge, and fancy that his reputation is in like manner assaulted and traduced; and in that state let him with-hold (if he can) his compassion for the man, who is the unhappy object of undeserved censure and reproach. Finally, as to the author and the two printers: the *one* has convinced the world, that nature sometimes acts against general laws, hence many monsters spring up, to the confusion of mankind; the *others*, have put it out of doubt, that *reputation*, with them, is not equal to the *wages* which are given to destroy it.

I come now to conduct our author into his seat, where he commonly makes his appearance every Sunday morning, in order to shew, how far his *book* corresponds with that part of our church service called the Litany, that divine and comprehensive prayer for all the sons and daughters of men. The solemnity of his approach, cannot but convince, all strangers in particular, that he is under a pious and reverential awe; his *serious* and
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seemingly devout attention, speak greatly in his favour; and you may almost fancy, that you see him grow into an *inward* and *spiritual* life, when he prays to be “*delivered from pride, vain glory and hypocrisy; — from envy, hatred and malice, and all uncharitableness; — from all sedition, privy conspiracy; — from hardness of heart, and contempt of God’s word and commandment:*” But, when he implores the God of mercy to “*bless and keep the magistrates, and to bless and keep all his people, and to bring into the way of truth all such as have erred and are deceived;*” when he beseeches the throne of grace “*to have mercy upon all men,*” and that God will be pleased “*to forgive our enemies, persecutors and slanderers, and to turn their hearts,*” how transcendently moved is this pious saint! every feature pays its adoration, and *all* the man is swallowed up in sublime and heavenly contemplation! Let no person mistake my meaning; all these appearances are graceful in all men, when they shadow forth the substance: it is only the affectation of *being* what in fact *we are not*, which subjects us to censure or reproach. Now I shall confine myself to our author’s own evidence of himself, without beating the bush and seeking out a new road, either for calumny or ridicule. It has been this man’s constant aim to *seem religious*; and nothing has materially thwarted his views, in setting up for
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this character, 'till the late publication of his extracts and remarks; but *nemo fictam personam diu sustinere potest*; sooner or later, the *mask* will fall from every *man* who wears it, and this fatal step has given a desperate stab to all his pretensions; outward gestures and strong professions, are of no avail, of themselves; for, if we have the *form* of godliness, and deny the *power* of it in *practice*, we deceive the world, and affront the God of truth: the *testimonium rei* denotes the *man*, as the *tree* is distinguished by its *fruit*; a firm persuasion in matters of a religious concern, unless it be accompanied with a suitable practice, is like the *image* presented to Nebuchadnezzar in his dream, "*whose head was of fine gold, but the legs and feet were iron and clay.*"

Try the author's book by his professions, his prayers, his austerities, his forms and gestures; do they correspond? or rather, does not the one demonstrably prove, that he wants, what the other is meant to denote he is possessed of? Try the book by the word of God; discover, if you can, whether such a publication is reconcileable with any precept or doctrine of our holy religion. Try it by the law of man; examine whether our constitution gives any countenance to works of such a nature, quality or tendency. And lastly, try it by the law of nature; and unless you adopt that dangerous principle of
Hobbes's

Hobbes's politicks, that men are naturally in a state of warfare with one another, it is impossible to collect a single argument from this law, to favour the author's work. By nature, all men are akin and friends to each other: God has implanted in us social and benevolent affections, and unless we stifle the growth and perfection of them, by rank and destructive weeds, which choak these seeds of grace and goodness, we are necessarily drawn to feel, in a certain proportion, for our fellow creatures; for whatever may be the faults or offences of individuals, they, as men, partake of the common nature, and though they may become obnoxious to censure, they do not cease to be men: from this kindly principle of relation, which is founded in human nature, arises a precept of universal use, that human actions ought to be uniform and consistent with themselves through the whole course of every man's life, for no man can act agreeably to right reason, who, as Horace expresses it,

Æstuat et vitæ disconvenit ordine toto,
fluctuates and disagrees with himself through the whole course of life.

Try the book by any law human or divine, or by reason only, and the author must be found guilty of the most daring violations. Brute animals act, for the most part, benevolently with their kind, and they generally abstain from hurting one another, a

position this, as well as that of our having friendly instincts, which are both admirably supported by *Juvenal*, in his 15th satire.

" Compassion proper to mankind appears,
 " Which nature witness'd, when she lent us tears.
 " Of tender sentiments, we only give
 " Those proofs: to weep is our prerogative;
 " To shew by pitying looks, and melting eyes,
 " How with a suffering friend we sympathize!
 " Nay, tears will ev'n from a wrong'd orphan slide,
 " When his false guardian at the bar is try'd.
 " Who can all sense of other's ills escape,
 " Is but a brute at best in human shape.
 " This natural piety did first refine
 " Our wit, and rais'd our thoughts to things divine:
 " This proves our spirit of the God's descent,
 " While that of beasts is prone and downward bent.
 " To them but earth-born life they did dispense,
 " To us, for mutual aid, *caelestial sense*.
 " From straggling mountaineers, for public good,
 " To rank in tribes, and quit the savage wood;
 " Houses to build, and them contiguous make,
 " For chearful neighbourhood and safety's sake;
 " In war, a common standard to erect,
 " A wounded friend in battle to protect;
 " The summons take of the same trumpet's call
 " To sally from one post, or man one public wall.
 " But serpents now more amity maintain!
 " From spotted skins the leopard does refrain:
 " No weaker lion's by a stronger slain,
 " Tyger with tyger, bear with bear you'll find
 " In leagues offensive and defensive join'd. "

Upon the whole of the matter, all the world must be convinced, I apprehend, that the conduct of Mr. Laurens has been cruel and oppressive to the last degree. Grant, for argument sake, that the judge has meted out hard measure to him; allow for a moment, that the force of his objections remain

unanswered,

unanswered, and the conduct of the man, is still open to the most severe and afflicting censure: but, if any of his reflections or remarks are cleared up to the reader's satisfaction; if it shall appear to him, that the judge could never mean to injure his friend, his relation, for a set of men whom he barely knew, and that too at the risque of his own reputation, and his *soul's comfort*, without profit, without promoting one single interest, or procuring to himself the least possible advantage; if he shall be thought to have maintained a good character in life, and (allowing for the common infirmities and frailties of human nature) no doubt shall remain with the reader, that, by his own strength and application, under the blessing of God on his best endeavours, he has gained some little reputation in the world; if he has, in some respect, answered the end of his creation; if he has not lived merely *consumere fruges*; if he has not wholly *closetted* himself; surely, the heart of man will be moved, in such a case. Let the reader, without regard to the persons in dispute, make the case his own; let him reflect, that scandal upon the parent, is an injury that possibly may descend upon the child; sometimes it happens, that their own fair unspotted reputation is the only legacy they may have to give them; how cruel then must that man be, who makes no conscience of

depriving

depriving them of this little but valuable patrimony, and of all that patronage, protection, countenance and support, which, now and then, is shewn to a man's children, when the little history of their parent's life can be rehearsed with advantage, by some humane recorder of a good man's name? St. James tells us, that the slanderous tongue *is set on fire of hell*; the devil hath his name from calumny, and it is his nature too; the scripture likewise informs us, he hath the malice and impudence to accuse good men before God, as he did *Job*, charging him with *hypocrisy* to God himself, who knows *the hearts of all the children of men*.

Whatever severity has dropt from my pen, has been shamefully extorted from me. Far be it from the disposition of my heart, to speak or write unkindly, of any man who breathes the breath of life; but, as archbishop Tillotson properly distinguishes, it is lawful to publish the faults of others in our own necessary defence and vindication. This last case excepted, the advice of the son of Syrach is noble and worthy imitation, "*Talk not of other men's lives: if thou hast heard a word, let it die with thee; and be bold, it will not burst thee.*"

It is very observable, that Mr. Laurens, in the course of his book, does not disclose one favourable sentiment: on the contrary, he proceeds upon the most avowed principle
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of malice, and shews, that he is carried away captive, by irregular and unruly passions: however, as I do not profess to be one of his disciples, or a friend to many of his doctrines, I will, for charity's sake, endeavour to find out (if possible) some excuse for the extraordinary conduct of this unhappy man. Natural philosophers know very well, that the *affections* depend greatly upon the imagination; that the motion of the *blood* and *heart*, which is necessary to life, is promoted by *love, desire, hope* and *joy*, especially when conversant about a *great good*, whence the *arteries* and *veins* are filled with more flowing juices, *brisker spirits* are produced, and the *whole circulation* is performed with greater ease: in this state, the *kind affections* bear the rule: but on the contrary, in *envy, hatred, fear* and *grief*, the motion of the blood is retarded, and the *heart* is clogged; so that it contracts and expells the blood with difficulty, whence the animal œconomy, particularly in the functions of the *brain* and *nerves*, becomes very much *disordered*. These points, I must own, properly belong to the sons of Galen and Hippocrates; but as every one's bodily frame is of some moment to him, and a man ought to be more or less acquainted with that piece of workmanship which is left to his own peculiar care and conduct, I do now and then dip a little into physical writers, if it be only to convince

convince my judgment that we are *fearfully and wonderfully made*; and not long since I casually fell upon a most extraordinary case, in Hervey's anatomical exercitation concerning the circulation of the blood, which perhaps may apply to our author's case, and work some apology for his surprizing conduct. "*I knew (says he) a high spirited man, who, through anger and indignation conceived for an injury, joined with an affront, received at the hands of a powerful person, so kindled with rage, that, envy and hatred continually encreasing, for want of revenge, and the strong passion which rankled in his mind being disclosed to no one, he fell at length into a strange kind of distemper, and was universally afflicted with a great oppression and pain, both of his heart and breast, so that, after receiving no relief from the advice of the most skilful, he fell, after some years, into a scorbutic habit of body, which threw him into a consumption, of which he died. He had some ease, only and as long as the whole region of his breast was compressed. His jugular veins were swelled as thick as a man's thumb, with a pulse high and strong, as if each of them were itself the aorta, or great descending artery, and appeared like two oblong aneurisms: when I had dissected the body, I found the heart and aorta so distended and stuffed with blood, that the size of the heart and cavities of the ventricles were as great as those*

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of an ox. " From this case, I think we may well conclude, that such passions obstruct the motion of the blood in the small branches of the arteries which are dispersed thro' the brain, and that great injury arises thence to the *heart*, and consequently to the *whole animal*; with dire symptoms of distempers to the great danger of life itself. This dreadful case admonishes every man, to preserve, if possible, a *benevolent, kind and affectionate* disposition towards all men, since *fierce hatred* against one man engendered such deadly mischiefs to *him* who cherished a passion so evil and pernicious in its nature and effects.

I leave the reader, however, to make his own application, as it is unfair for an author to exhaust a subject, which may chearfully employ a few leisure moments to those who may think it matter of amusement.

A few words more, and I consign the man to the vilest curse upon earth, "*his own unruly will.*" He tosses himself about, like a boy's boat unskilfully *trimmed, piloted and rigged*; he is *wise* to-day, and *otherwise* to-morrow; a *merchant* one year, then a *colonel*, and soon after *repents* of both. The goodness of his heart persuades him one moment that a certain branch of his profession is odious, nay, repugnant to all *sound doctrine*. He reads the Revelations, which speak of divers articles of merchandize, and finding that *slaves* and the souls of men are also in the

the enumerated list, swears that St. John meant, in his *vision*, the pernicious practice of the *African trade*; he therefore withdrew himself from the horrid and barbarous connection, retaining however, to himself, a few of those *jewels* which he had heretofore amassed, some of the *wages* of this *abominable trade*, for an old ballad relates, that “gold in handling will stick to the fingers like meal.” He then retires from the world; dabbles however a little with its concerns; sets up as a *Palladio* upon a plan of architecture, and makes a bold push to be the first man in a new street, by commanding the waves to quit their *antient bed*, and make room for two *tenements* of folly to stare him in the face, when he takes an idle gaze from his parlour window.

The same strange singularity, by all accounts, ever governed the man in his cool moments; and he supplies us with evidence enough of what rules him in the rage and tempest of his blood: with all this *queerness* he ever carries about with him a little *mantle* of religion; it serves to colour and disguise, and delude poor souls into an opinion of his *inward grace*. I have been told (though I by no means assert the thing as fact) that he whimsically became a *pluralist* some years ago, by serving the province in the two-fold capacity of a *colonel* and *chaplain* to the regiment, that he now and then *preached* before

fore he *marched*, and *marched* when he had *preached*: whether these *two offices* were strictly compatible or not, or whether the *motions* of the spirit in the *colonel*, were considered as orthodox and regular by the *men*, or quickened their bodily operations, are *researches* rather too deep for me to fathom; however, it is no unnatural conjecture, that the *spirit* of the *gospel* resisting, in principle at least, the *spirit* of the service, and the colonel dividing his strength, and contemplating the *curam animarum*, full as much as the *coronam bellicam*, he proceeded on his way with a slow and solemn pace, no doubt persuading himself, that *he* and his party trod on *holy ground*; however they, with the other troops in the same expedition, rather outsped the pious colonel in the march, so that he probably adopted the words of *Joshua* “*as for me and my house, we will serve the Lord.*”

I wish, with all my heart, that the colonel had lived a century ago, for his own sake: he is well fitted for such times, and Cromwell, who knew the human heart and could be all things to all men, would by no means have overlooked a character so suited to his purpose; he might have been a second general Harrison, who was also a military saint, that used to advise the protector to *run aside sometimes from his company, and get a word with the Lord.*

Having for the present, I think, sufficiently enlarged upon this complex character of a man upon *his own evidence*, in which idea I comprehend not only the *pamphlet*, but also his public station in life, so far as either afford room for observation; it may not be amiss to take notice, that the man whose conduct as an officer is attacked, is no more a public station than that of the *merchant*, the *lawyer*, or the *tradesman*, and consequently, each lies open to the most free examination, and the rather, when the attack is made upon that officer without mercy, without charity, I had almost said without one principle of honour to support it. However, I have not, in any one instance, to my knowledge, violated the sacred laws of friendship; nothing has dropped from my pen which Mr. Laurens has at any time disclosed to me: and I cannot charge myself with a single departure from the rules which the secrecy of friendship requires, unless the *letters* which the author wrote to me give room for an exception; however, let every one consider, that such letters, from the moment they are dispatched to the party, cancel all private laws of friendship and regard, and instantly become the property of the man to whom they are addressed; let it be considered likewise, that no parts of them but such as concern myself are made public, and that they are only produced in my own
necessary

necessary vindication, and to establish the inconsistency of the writer's conduct, who departs, in them, from his own tenets, to gratify a malignant and evil disposition; and I think the world will admit, that it is, in every sense, a just and allowable freedom, resulting from the absolute urgency and uncontrollable necessity of my particular case.

There remains only one or two points more for the reader's consideration.

On the 28th day of July last, Mr. Laurens endeavoured to renew the correspondence mentioned in the 114th page of these sheets, by a long letter which he wrote to me, containing many *impudent reflections*. He gave me to understand, that he had prepared some copies of the proceedings of the court of admiralty, which he proposed to transmit to his correspondents in England and America; and he therein expresses himself as follows: "*You know my warmth of expression—you know the foundation of my complaints—you know my inability to express myself, however good my cause may be, like a scholar and a man of letters; but I am sure, Sir, you know also, that I scorn to tell a lie, and that I am incapable of taking base and cunning advantages of any man; therefore, such as my writings and such as my sentiments are, if any proper method can be devised for that purpose,*

purpose, you may have a full knowledge of them, and I may thence perhaps receive new light, and may, in many respects, discover my own mistakes; at least, I shall ward off the imputation of wounding either, through wantonness or from blind prejudices, the characters of good men."

This letter was a mere copy of his countenance, and a palpable piece of *hypocrisy* and *deceit*, calculated to give him some pretence to *candour*, though he was certain I had put it out of my power to devise any method, for the purpose of coming to the knowledge of his writings; not only by a paper which I sent him seven days before, expressing, "*that I should not give myself the trouble to answer any more notes;*" but also, by omitting to give him an answer to his letter of the 21st of July; and he could not but know likewise, that, under this *show* of *candour*, he was putting a base insult upon me, because it was impossible for me at that time, as a *judge*, to undertake a task so debasing and humiliating, as that of submitting to be tried at the *bar* of our author's *justice*, upon points too, which related to himself as a *party*, and which had undergone a solemn determination in open court: I therefore think myself well warranted to say, that he was not influenced by *candour*, but by a perverse and wicked principle, which urged him on to *torment, mortify, chagrine* and

and vex me. His views however were disappointed, and he might clearly perceive, that I then held him (as I now do) in the utmost *abhorrence, detestation, and contempt.*

I have made it very plain, in the course of these sheets, that Mr. Laurens has exceeded the *truth*, in the very face of his own letter, wherein he has the assurance to acquaint me that I *know* he scorns to tell a *lie* : it is also as manifest and clear, that he can take *base and cunning* advantages, though, in the same letter, he is pleased to insinuate, that he is incapable of doing so ; and it contains only one apparent fact, “ *that I know the warmth of his expression, and his inability to express himself, however good his cause may be, like a scholar and a man of letters ;* and if he had also added *like a gentleman*, he would not, in *that instance*, have departed from the *truth*.

I will never quit him, 'till it is either in my power to convince, or banish him the world. In his present disposition, he is neither fit for *life* or *death* ; not for the former, because he wants that charity and milkiness of heart which is absolutely necessary to promote the ends of true society ; nor for the latter, in the view of wise and good men, who seek a place of happiness, the enjoyments whereof cannot possibly be relished by a man of his turbulent and outrageous nature.

One other instance of our author's *effrontery, audacity* and *mean boldness*, remains yet to be examined. Upon the 20th of February last, about nine o'clock at night, when a man is supposed to have retired from the fatigues of the day, and to enjoy a few moments of repose with his family and friends, he sent his young man, with his book of extracts, and a piece of the worm-eaten *plank* of the ship *Ann*, as a present to me: I received them, and the messenger withdrew. Upon examination of the *plank*, I found that the worms had made an infinite number of little cells or cavities; and as the author is silent, in his book, on these circumstances, I concluded, that he sent it to me as an *emblem* of his own *hollow, perforated heart*, and therefore, it is my full determination, to enclose it in brass, whereon I shall cause to be engraved a suitable inscription, which shall express in few words, that it is a figure of the man who sent it as a *present*, and I shall then lodge it in my cabinet of curiosities, to be occasionally viewed and admired by such friends as may at any time desire to see it.

For seven months past, has this *wicked brute* tortured his invention, to contrive every method to give me pain and anguish, by reading his manuscript to all strangers, friends and acquaintance; by making it the principal

pal subject of conversation at his table ; by transmitting copies to many of his correspondents ; by writing abusive and scurrilous letters to me, full of the most bitter and acrimonious reproaches, charges and insolent criminations ; by cruel and unjust reflections on a dear deceased relative ; by publishing his book of extracts ; by sending them to every part of America, the West-Indies and Great Britain ; by furnishing the principal ministers and officers of the crown with copies, both at home and in the provinces, thereby attempting to poison their minds, and to reduce me to the most abject state of ruin, ignominy and disgrace ; by a base paragraph in the public papers, which he inserted five days only after the publication of his pamphlet ; by the mode of sending the same to me ; and in short, by every subtle, vindictive and diabolical art and stratagem which he has been able to devise for so many months together. Nothing but the inward sense of my integrity, has supported me under this dreadful state of calamitous distress : a weak mind must have sunk under this diversity of persecution ; and I am certain, that every humane heart will entertain a little notion at least, of those *feelings* which must have taken some possession of a man so *circumstanced*, so cruelly *persecuted*, *tormented* and *tra-duced*. Let my readers reflect for a moment, what must have been *his conflicts* in such a case,

case,

case, and they will find, that I have exercised some few Christian graces, and submitted, with patient resignation, to as great a trial as can possibly fall to the lot of man.

I am truly a much injured person, and I hope the world will do me justice. And my fellow subjects in this province in particular : I hope, they will enable me to guess at least at their sentiments ; whereby I may enjoy such blessings as providence has bestowed upon me, with the same *fullness* which I have heretofore experienced. I could say more, but the subject overcomes me, I must therefore hasten to conclude.

My reputation and honour, in my public stations, having been thus infamously drawn into suspicion, I think it my duty to declare thus publicly, and with the same sincerity as if I was sworn upon the Holy Evangelists, that, in every case, without exception, which ever came before me, during my administration of justice in the court of vice-admiralty of this province, it has been my constant endeavour to judge, if possible, a righteous judgment. No man ever sat upon a bench with a heart better disposed to advance the cause of truth ; and it is not in my power to charge myself, with the least inclination or bias to one side of a question more than another. In short, my conscience is clear

clear as the limpid stream, and *there* I feel a support, a balm and comfort, which heals every wound, and gives a peace to the mind which passeth understanding. I feel the injury done me, with so exquisite a sense, that I would not, for all the *treasures, pomp and glitter* of this world, be the author of *such a work*, against so innocent a man. I *forgive him*: but I tremble, in the softness of my heart, for those *stings* of bitter grief and inward remorse; which, at some future day, must wound his peace of mind; when the concerns of this world *lessen* to his view; when *nature's lamp* shall be nigh exhausted; when the *knees* begin to tremble, *sight* grows dim, and the *grinders* cease their labour, then perhaps the soul, warmed with a pure affection, and struggling to escape from its prison-house the body, may dictate to, and perhaps strengthen, the *man*, in his last moments, to cry out, *Restitution to him whom I have injured!* My prayer from this day forth shall ever be, that God will be pleased to enable me, in the hour of death, to confirm the truth of the above declaration with my last words,

- “ ————— if one jot beyond
 “ The bounds of honour, or in act or will
 “ That way inclining, hard'ned be the hearts
 “ Of all that *read* me, and my near't of kin
 “ Cry, fie, upon my grave!

And now I submit, with due respect, this
 U extraordinary

extraordinary case, to the candour of the world ; and, finally, I take my leave of Mr. Laurens, whom I sincerely pity, wishing him a more composed, *truly religious* and *settled state of mind*, and that he may deliberate with caution, reflect with candour, and regulate his future conduct by those maxims which in *theory* he *professes* to approve, but which he has not hitherto *adopted* by his *practice*.

EGERTON LEIGH.

CHARLES-TOWN,
30th MARCH, 1769.



37
Nath. Hall
&

CONSIDERATIONS

ON CERTAIN

POLITICAL TRANSACTIONS

OF THE

PROVINCE OF SOUTH CAROLINA.

[Price One Shilling and Sixpence.]

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CONSIDERATIONS
ON CERTAIN
POLITICAL TRANSACTIONS
OF THE
PROVINCE OF SOUTH CAROLINA:
CONTAINING
A VIEW
OF THE
COLONY LEGISLATURES
(Under the Description of That of CAROLINA in Particular).

WITH
OBSERVATIONS,
Shewing their RESEMBLANCE to the BRITISH MODEL.

—In Vitium Libertas excidit, et Vim
Dignam Lege regi. HORAT.



Sir Egerton Leigh

*See Drayton's Memoirs
T. 65*

LONDON:
Printed for T. CADELL, in the Strand.

M DC LXXIV.

CONSIDERATIONS, &c.

IT is the Duty of a Good Citizen and a Loyal Subject, to promote, as far as in him lies, the Public Service ; and one step towards it is, candidly to examine those Principles and Tenets which divide Men's Minds, and inflame one part of a Community who glory in adopting, and the rest in opposing and rejecting them.

Opposite Sentiments, long remaining unexplained, always engender Disputes ; and as it is a nice and delicate concern to discuss the Causes of Public Discontent, the business often is neglected. — Hence it is that prejudices naturally arise ; loose opinions steal into Men's hearts ; and That is held for Truth which flatters the present Humour : besides, there is a Fashion in the Mode of *Thinking*, as well as in the Mode of *Dress*.

The great aim of a Worthy Writer ought to be directed to the search of Truth.—He may be permitted to express himself with so much warmth as will convince his Reader that he feels : but intemperance and passion mock all serious disquisition, and must be carefully avoided ; for *over-beated Zeal never helps a bad Cause, and seldom serves a good one.*

Under this kind of influence and persuasion I take up the pen ; but with that modest fear, that trembling awe, and mistrustful apprehension, which almost shake my resolution. I therefore

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humbly bespeak the candid attention of my Readers, and those liberal allowances which the Generous Public are ever ready to make, when modestly implored, and not arrogantly or self-sufficiently demanded.

The best proof of my own candour is to avow my connection with the Crown; that I am a downright *Placeman*; have been so for nearly twenty years; and that I owe more to the Royal Favor, than any merit I possess can justly claim. And now, methinks, I may fairly be allowed to say, according to the Maxim of the Times, that I have given a most Disgustful Figure of myself—a monstrous Portrait! — the painting whereof is coarse, the colours glaring, and the whole Piece obnoxious to the sight. I fear the number of my Readers will be greatly lessened. — Not a Person out of Place will, probably, peruse me; and the Patriots will, one and all, avoid me: for, according to modern Acceptation, a Man in Place is a perfect *Bastard* to a *Patriot* out of Place; it being now very manifest to all Mankind, that this single circumstance alone, *the being in or out of Place*, defines and gives the difference, between a *Popular Member* of the Community, and a *Courtier* at St. James's. No matter—The Ill-favoured Figure is before the Public Eye; and they are welcome to use it with all the Gothic Freedom of their Ancestors, and to censure or approve.

It is not my intention to enquire into the Policy of imposing Stamp-duties on the Subjects in America; neither do I presume to determine any thing respecting an Act so extremely offensive to the Colonies in general; but I beg to offer a small conjecture, That the Repeal thereof will prove to be an *Epoch* in the Annals of British Story; for, since that Memorable Period, the Public Affairs of these Countries have been in a state
of

of almost ruinous Distraction; and what was probably meant to inspire Gratitude and Love, has rather kindled Rancour and Disgust.—The affection of the Parent State seems to be considered as the effects of aged fondness and impotent attachment: and sorry I am to say, that Concessions have daily produced Usurpation and Resistance; one claim has been followed by another, which, generating more, have multiplied like the encreasing power of numbers, in a course, as it were, of *Geometrical Progression*.

By slow, and almost imperceptible degrees, Jealousies and Distrusts have fastened upon Men's Understandings; and the Tone and Temper of the People's Minds have undergone some Fatal Changes. Man is not born for a series of indulgence — and Human Nature teaches us, that we cannot bear a constant Tide of flattering Success, without becoming Insolently Saucy, and Arrogantly Vain. It is as necessary that some Line should limit and ascertain the exact Boundaries of our Political System, as that Landmarks should be made to determine the extent and figure of our Lands. Dormant Rights likewise, and supposed Titles, are eternal sources of Confusion! And such is the strange Contradiction of our Nature, that we never complacently yield a clear Right with so good a grace, as when it is powerfully demanded. Thus we may be justly stiled, "*Children of a larger Growth*;" for Children lose their temper when too much humoured and caressed.

It is not my design at present to carry my Observations beyond the Boundary Line of the Province of South Carolina; though I must take notice by the way, that when American Disputes ran very high, some years ago; and all the Men of Genius in our Sister Colonies strained every

nerve, and summoned every power, to support the favorite Doctrine of the Times, *we stood gazing with a silent Admiration*; and, like the stupid Devotees of old at the Mystic Oracles of Delphos and Apollo, waited for a Breath of Inspiration from the Renowned Town of Boston! In short, we had just so much Understanding as enabled us to Copy, with tolerable accuracy, those Lessons of Political skill, which were kindly wafted to us *from the Land of Vision* (as a decent Writer prettily enough styles the Province of New-England). This, however, was our *Ultima Thule* for some time.—The power of Mimickry baffled all the powers of Genius, and our Ambition was well satisfied; partly under the persuasion of being good Scholars, and partly under the flattering hope, that we might in due season become Masters of the Art. Practice ever gives confidence—and as a Child, by frequent essays to walk, is encouraged to lay aside his *go-cart*, and quarrel with his *leading-strings*, so we, in like manner, began to take Courage, to feel our own Strength, and to find our own Feet. There is something very soaring in the Human Mind; and an Idea of *Originality* is flattering to a great degree. Hence it is, that I date those Memorable Exertions, which never once entered into the Heads of our *Northern Tutors*: and what adds to their Value and Importance is, that the Acts, which I propose to celebrate, retain, in every sense of the word, their *Originality* to this day; not one Copy having been made by a single Colony on this Wide-Extended Continent.

The first Fancy which cast forth its irradiating beams upon the Minds of our Assembly, signaled the Annals of the Year 1766.—It was then discovered, that the “*American Stamp-Act*” was not “*transmitted to the Governor by the Secretaries of*”
 “*State,*”

"*State, or Lords of Trade*:" and although the Lieutenant-Governor, who was then in Administration, had been furnished by the Attorney-General with the Act printed by His Majesty's Printer, yet it was not deemed by the Assembly to be such a Notification thereof, as to oblige a Governor to enforce the Execution of it.

It is difficult to say, to whom they were indebted for this Wonderful Discovery: whether to Lawyers or Laymen, is very immaterial, inasmuch as nothing of the *kind* was ever hinted by any other Provincial Senate. Perhaps our Neighbours recollected what my Lord Coke says, that * "before Printing, and till the Reign of Henry the Seventh, Statutes were Engrossed in Parchment, and by the King's Writ proclaimed by the Sheriff of every County," and therefore, they might possibly conclude, that this practice was not only out of use, but since the Art of Printing was an unnecessary caution. Be this as it may, it is sufficient to observe, that the Honor of this *State Juggle* belongs to *us* alone.

I mention this by the bye, as being an *Effort* of our own; and yet not so much for the Credit which it gives, as to convince Mankind, what astonishing advances we have made, from the first moment we abandoned our Political Teachers, and stood like Men upon our own proper legs. — Besides, there is both Instruction and Delight, in tracing the displays of Human Understanding, from the early budding forth, to a more advanced stage of culture and improvement. When we proceed step by step, tracing, as it were, the several gradations, marking the stealing progress of Man's inventive skill, and keep a steady eye on the several Operations, we naturally ac-

* 2 Inst. 526, 644, 670.

quire a regular System of Reflection, and we find our Judgement ripened, in proportion to the attention we have given, and the admiration we have paid.

The Reader will perceive, that the first commencement of Carolina Politics on our own proper bottom (after most Servile Imitations about the same period), is dated upon the Introduction of the Stamp-Act into the British Colonies: and, having said as much as the Importance of our *first Walk* in the wide field of Political Science, merits at my hands, I proceed to state and consider a *Second Effort* of the Assembly, which, for its *vast Reach, profound Depth, and uncommon Boldness*, challenges the first Rank in the Annals of Modern Story.

That the mind may be duly prepared to receive a becoming impression of this matter, it is proper to premise, by way of excuse for that lapse of time between the *first Stroke* and the *second*, that our advances, though slow, and after a long pause, are nevertheless extremely regular and sure: and though we cannot boast any great rapidity of Genius, it is evident that we sufficiently atone for the defect by the *solidity*, the *comprehensiveness*, the *novelty* of the Plan, and the *immensity* of its Object.—For my own part, I always prefer a superstructure upon an old and settled foundation—I hate all sudden and flashy operations; they have nothing either permanent or secure about them: then, again, they supply little for the mind to dwell upon; for travelling like a ray of light, they both dazzle and confound; whereas the *sober*, the *cool*, the *long digested Plan* commonly bids fair to secure both Approbation and Applause. Let us now bring this Business to a proper Test; try it by its own intrinsic worth; examine its tendency; view the
measure

measure through the purest speculum; and, provided the Enquiry is conducted with singleness of heart, and with an eye to Truth, we shall neither repine at the labour, or retire from the contemplation of the subject with disgust.

On the eighth day of December, 1769, a full House of Assembly passed an Order in the words following:

“ ORDERED, That the Public Treasurer do
 “ advance the Sum of 10,500l. Currency (equal
 “ to 1500l. Sterling), out of any Money in the
 “ Treasury, to be paid into the hands of certain
 “ Members therein mentioned, who are to remit
 “ the same to Great Britain, for the Support of
 “ the Just and Constitutional Rights and Liber-
 “ ties of the People of Great Britain and Ame-
 “ rica.

“ RESOLVED, That this House will make Pro-
 “ vision to reimburse the Public Treasurer the said
 “ Sum.

“ By Order of the House.”

This Sum was remitted by Bills of Exchange, drawn by some Merchants there, in favor of the late Public Treasurer of the Province, on certain Gentlemen in London and Bristol.

This being the plain and simple state of the Case, it is but just that the Assembly's inducements for adopting this measure should accompany the fact. After a repose of about three Years, from the date of the last Transaction, the Assembly had been, no doubt, ruminating upon the situation of Public Affairs, both at home and abroad: and as Men of liberal sentiments disdain to confine their Benefactions to the Members of their own soil and climate; and, like Citizens of the World, taking a wide and extended range, and wisely contemplating the rise and fall of Empires, and, probably, reflecting that the Consti-
 tutiion

tution of Great Britain was apparently going to decay, and that only one faint dawn of hope remained from *Club of Patriots*, who had then lately formed themselves into a Society for Supporting *The Bill of Rights*: I say, from some of these considerations they voted the Sum stated in the Order. It appears, likewise, very clear to me *, that they were convinced “ how nearly the Americans must be affected by any attacks upon “ the Constitutional Rights and Liberties of their “ Fellow-Subjects residing in Great Britain; and “ that they, perceiving the Oppressions they and “ the Colonies actually suffered proceeded from “ the same cause; and also feelingly sympathizing with those *noble Spirits*, who had stood, and “ were then standing, as it were, in the Breach, “ fronting the whole collected Fury of Ministerial “ Vengeance; therefore they gave this free and “ liberal aid, that the same might be applied “ in Defence of the Constitutional Rights of all “ the Subjects of the British Empire; and particularly for Supporting such of their Fellow-Subjects, who, by asserting the just Rights of “ the People, become obnoxious to Administration, and suffer from the Hand of Power.

“ I am also persuaded, that this Assistance was “ given upon an idea, that those noble Purposes “ could not be carried into execution in any “ measure so effectually as by placing the Money in the Hands of the *Gentlemen Supporters* “ of *The Bill of Rights*, that truly Patriotic Body “ of Men; so that Peace, and Happiness, and Constitutional Security, might thereby be extensively and freely enjoyed by every Subject “ throughout the British Empire.”

* The Committee's Letter to the Agent.

No Man can deny that these were the ostensible reasons for this extraordinary Gift; and as all our present Distractions spring from this single source; and as the tendency of the measure makes this subject a point of some concern; I shall take the liberty to examine it with all that spirit of Freedom, which it seems to have been the ambition of the Assembly, in other cases, to cultivate and improve. I fly to the great Bulwark of our Liberties—the *Press*;—and as it is the peculiar privilege of a free-born Subject of Great Britain to consider the legality, justice, and propriety of Public Measures, no Man, with any face of reason, can blame my conduct in this respect. I purposely avoid every personal reflection; neither is it my design to cast a slur on a single Individual, or to point at the characters, principles, or tenets of Private Persons.—It is the act of the whole Body which alone engages my attention; and, therefore, if any word or phrase can be tortured to import private reflections, let them call to mind, that I profess to treat of *Measures*, not of *Men*.

I believe it will be readily allowed, by every Person of common Understanding, that the *Purity* of an Intention is not of itself alone a substantial reason for a measure grounded thereon; and it is a point alike obvious and admissible, that whatever Acts, for the advancement of the Public Good, are proposed to be adopted by a Legislative Body, must have their foundation in the Constitution, or ought to be rejected: because, under imaginary notions of doing *good* upon false principles, they may be insensibly led to commit great *evil*: it is, therefore, incumbent upon all *Bodies Politic*, to examine with the utmost nicety and precision, the true bottom and foundation of every proposition, lest they should be unwarily

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betrayed

betrayed to wound that Constitution, which it is their Duty to support. Legislators must never do any thing, merely because they *dare*; for this is a base and ignoble maxim:—they must always Virtuously Dare to do what is *Right*, that they may be cautiously fearful of doing what is *Wrong*.

The Money being thus voted and remitted, was actually paid to the Illustrious *Supporters of the Bill of Rights*, or to the Secretary of that Society for their use, according to the intention of the gift: how the same has been applied is a kind of secret, which will probably remain so; and it is very foreign to my present purpose, to pass even a conjecture on this head.

About the month of March, 1770, the Lower House sent to His Majesty's Council (being the Upper House of Assembly) the Annual Tax-Bill, to defray the Charges of the Government from the first day of January to the thirty-first day of December, 1769, both days inclusive, and for other Services therein mentioned: and on the second reading thereof, and also of the Schedule there-to annexed, the Council discovered the following Charge: viz. "To Jacob Motte, Esq. advanced by him to certain Members of the House, by a Resolution of the House of the eighth of December last, 10,500 l." and the Council, by a message to the Lower House, dated the fifth day of April, 1770, declared, That the Grant of the Sum beforementioned did not appear, in any sense, *honourable, fit, or decent*: not Fit or Honourable, as they conceived the Assembly's Jurisdiction was merely local, and for Provincial Purposes; and not Decent, as the Grant by the Tax-Bill was expressly declared to be for His Majesty, and yet contained a provision highly affrontive to His Majesty's Government, which they

they declared to have ever been, in their opinion, Gracious, Mild and Good, to all His faithful People. The Message was temperate; and calculated to persuade the Lower House to remove that obstacle which prevented them from giving their concurrence to the Bill.

The Assembly sent an Answer two days after, returning the Council's Message for their Calm Re-consideration; which was immediately followed by another from the Upper House, expressing that the Assembly's Proceedings were neither Parliamentary or proper; and that they were determined to adhere to their former sentiments. About this time a Prorogation took place; and thus ended the Business of this Session.

The Legislature again sat in August following, when the Honourable William Bull, Esq. Lieutenant Governor, communicated a Copy of His Majesty's additional Instruction to the Governor, which had then lately come to his Honour's hands, bearing date the fourteenth day of April, 1770.

This Instruction recites, " That the *Lower House* of Assembly in South Carolina had lately assumed to themselves a power of ordering, without the concurrence of the Governor and Council, the Public Treasurer of the said Province to issue and advance, out of the Public Treasury, such Sums of Money, and for such Services, as they had thought fit.—It next states the Case before rehearsed, which was the very occasion of this new Instruction; and after deeming it just to put a stop to such dangerous and unwarrantable Practices, and for guarding against such unconstitutional Application of the King's Treasure, Chearfully Granted to His Majesty, for the public Uses of the Province, and for Support of the Government thereof, His Majesty is pleased to direct the Governor, on Pain

“ of Removal, not to give his Assent to any Bill
 “ that shall be passed by the Lower House of
 “ Assembly, by which any Sum of Money shall
 “ be appropriated to, or Provision made for, de-
 “ fraying any Expence incurred for Services or
 “ Purposes not immediately arising within, or in-
 “ cident to, the said Province, unless upon the
 “ King’s Special Requisition; nor to any Bill for
 “ Granting any Sum to His Majesty, &c. in
 “ which Bill it shall not be Provided, in express
 “ Words, that the Money so to be Granted, or
 “ any Part thereof, shall not be Issued or Applied
 “ to any other Services than those to which it
 “ is by the said Bill appropriated, unless by Act
 “ or Ordinance of the General Assembly of the
 “ said Province.

“ The Proclamation next forbids the Gover-
 “ nor to give his Assent to any Bill passed by the
 “ Lower House, by which any Sum shall be
 “ Granted to His Majesty, &c. generally, and
 “ without Appropriation, unless there be a Clause
 “ inserted, Providing, that the said Money so to
 “ be Granted shall remain in the Treasury, sub-
 “ ject to such Appropriation as shall thereafter
 “ be made by Act or Ordinance as aforesaid.

“ It contains also a Provision, that in all fu-
 “ ture Bills for Raising and Granting Public
 “ Monies, a Clause be added, subjecting the
 “ Public Treasurer, &c. in case he shall Issue or
 “ Pay any such Money otherwise than by ex-
 “ press Order contained in some Act or Ordi-
 “ nance of the General Assembly, to a Penalty
 “ in Treble the Sum so Issued contrary thereto,
 “ and declaring them to be *ipso facto* incapable
 “ of holding his said Office, or any other, Civil
 “ or Military, within the said Province.”

On the thirtieth day of August, 1770, the
 Commons House of Assembly made another ex-
 periment,

periment, by sending a like Tax-Bill and Schedule, containing the same obnoxious Item as the former, which the Upper House rejected on the first reading; a thing seldom done, and perhaps only allowable in certain cases: however, this Session ended like the preceding one, by a Prorogation to the 16th of January 1771.

On the 15th of February following the Lieutenant Governor communicated to the Council the following paragraph of a Letter which he received the same day from the Right Honourable the Earl of Hillsborough: "I must not
" omit to acquaint you, that the becoming man-
" ner in which the Council have exerted them-
" selves in support of his Majesty's Measures, has
" not escaped the King's Observation; and I am
" commanded to signify to you his Majesty's
" Pleasure, that you should express to them
" his Majesty's Approbation of their Conduct;" which his Honour the Lieutenant Governor did accordingly.

It would be tedious and unprofitable to set down the many Meetings of Assembly since this period, or to mark the several Prorogations and Dissolutions which have taken place from time to time; it being sufficient for the present purpose to observe, that the several Tax-Bills since August 1770 have been rejected by the Upper House upon the same principle that influenced them to reject the former Bills; and the same obstruction to public business still remains; the same firmness in the Council in opposing what the Assembly insist upon as a Right, tho' disallowed by the King's Instruction; and the same obstinacy in the Commons House to maintain the Right contended for: every season has produced warm resolutions and messages in a stile of contempt and intemperate resentment.

I cannot

I cannot omit taking notice in this place, that in October 1771 another Tax-Bill was brought to the Upper House, and in November following was returned to the Lower House, with a message grounded on the original objection; and as they in the course of this Session proceeded so far as to commit the present Public Treasurers for a non-compliance on their part with a new order of the House for payment of money for a public use upon their *own Authority alone*, and in the face of the King's Instruction providing against any such attempts, the House was immediately dissolved. In April 1772, when Lord Charles Montague was in the Administration of Public Business, he took occasion in his Speech at the opening of that Session, to acquaint the Commons House of Assembly, that his Majesty "had lately again signified to him, that it was his pleasure, That he should adhere with firmness to the directions contained in his additional instruction of the 14th of April 1770; and that it was his firm resolution to adhere to the Constitution."

The Provincial Agent has been instructed to apply to the Crown, requesting his Majesty to reconsider the said Instruction; and also to withdraw the same. A Petition was accordingly presented for that purpose; but the Instruction has neither been vacated or withdrawn: the Reader will therefore clearly perceive that a solemn confirmation of the Royal Order in his Majesty's Privy Council places the dispute at so great a distance, that there is not the least shadow of expectation that the Crown will revoke an Act framed upon mature deliberation. Besides, after the most gracious condescension on the King's part to the ardent wishes of the Commons

mons House of Assembly, the said Instruction having been ratified and confirmed on a revision of the merits, it is the most unpardonable presumption to look for further concessions from the Crown.

It is not foreign to the point to observe, that the King's Ministers have been, from time to time, furnished with every plausible argument in favour of the Vote and Resolution, and with every precedent from their Journals, that by any construction can be considered as a plea for such a practice; and therefore the case has been in as fair a train as possible, and must be presumed to have undergone the strictest scrutiny and enquiry. But notwithstanding all these advantages on the side of the Commons House, and that nothing urged by them has ever been opposed or contradicted by any other body of men before the Privy Council, the same obstacle stands in the way; and not a single public debt has been provided for since the commencement of this dispute on the fatal 8th of December 1769. And that we may form some idea how the Royal Mind stands affected in relation to this subject, so late as the month of June 1773, I give you the following Extract from my Lord Dartmouth's Letter to his Honor the Lieutenant Governor, relative to the Council's having in March last rejected the Tax-Bill, which he communicated to the Council the 6th day of August last, viz. His Lordship acquaints him, "That the said proceeding of the Council was
 " considered by the King as a fresh mark of
 " their zeal and duty; and his Lordship was
 " further commanded to desire, that his Ho-
 " nor would not fail to signify to the Council
 " his Majesty's Approbation of their Conduct;" which his Honor then did with great pleasure.

Thus

Thus have I most dispassionately and candidly stated every material circumstance attending this important subject, nearly in the words used by the several parties in the course of the transaction; and, as far as I can judge, in no shape contradictory to their genuine sense and meaning. I am not conscious that any thing is omitted which can give light or information in the case; and tho' I have been necessarily obliged to trespass upon my Reader's Patience in order to collect the substance of every Legislative Act, and bring it into a clear point of view, so far as relates to the Vote and Order of the Commons House of Assembly, yet I trust that the matter in dispute will be now more clearly understood.

The true points of debate, then, may be comprehended in a few plain positions, arising from the above detail of facts, viz. That the Commons House of Assembly signalized themselves in favour of a Club called the *Supporters of the Bill of Rights*, held at the London Tavern, by voting in December 1769 1500l. Sterling for their use, and ordering the Public Treasurer to pay the same out of any monies in the Treasury.

That this Order was made by their own *Sole Authority*, independent of, and without the privacy or consent of the other two branches of the Legislature.

That when the first Annual Tax-Bill was sent to the Upper House in the month of March 1770, with a Schedule annexed containing the following charge, viz. "To Jacob Motte, Esq. advanced by him to the persons named by a Resolution of the House 10,500l. (being of the value of 1500l Sterling)" the Council rejected the said Bill, and several subsequent

sequent ones have since met with the like fate for the very same reason.

That the conduct of his Majesty's Council has not only been twice highly approved by the King himself, but the dispute has been taken up by the Crown; and by an additional Instruction to the Governor, such Orders have been declared to be unconstitutional; and the like practice has been thereby fully provided against in future.

That the Assembly, tenacious of their Rights as conceived by them, and obstinate in adhering to the measure which had given so just cause of offence, have repeatedly persisted in the justice and propriety of the original Vote and Order, notwithstanding his Majesty's royal interposition in the case.

Thus stands this important Contest between the Crown and the People's Representatives of his Majesty's Colony of South Carolina.

Let us now proceed to consider the Act of the Commons House with a *bold* and *manly* freedom, and in all the different views in which it can be placed.

First, then, the measure was originally bad, in every sense of the word. For granting the power, for argument sake, to be in the Assembly to pass such a Vote and Order, independently of the other two Branches of the Legislature; still the exercise of such a power, in the case stated by the Order, was *idly* and *unnecessarily wanton*; the appropriation of the sum for the purposes mentioned, *arbitrary* and *unjust*; the objects of their benevolence, *laughable*, *ridiculous*, and *absurd*; and the pretended cause of the Grant, a *gross* and *palpable affront* to his Majesty, as also to his Government.

That the Act was both *idle* and *wanton*, may appear from a consideration of the Royal pre-
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dilection

dilection in favor of this Colony on numberless occasions. The King's Ministers have ever been open to access, and almost every proposition from the Agent has been attended with remarkable success: in war, we have been peculiarly protected by an early appointment of Convoys; and Government has afforded its best aid to procure liberal Bounties on the various products of the country: in short, the Colony of South Carolina may be considered as one of the most favoured soils in his Majesty's American Dominions. That the measure was *arbitrary* and *unjust*, I appeal to any man of common sense and understanding. The Delegates of the People may raise money; it is, perhaps, their immediate province to originate Supply Bills, and to lay Duties, Taxes, and Impositions upon the People, with the concurrence of the other Branches of the State: but under pretext of these Constitutional and inherent Powers, they ought not to extend these Rights beyond the original views and intention of those from whom they derive their whole authority. There is a line of Jurisdiction for every order of men in a civilized state, beyond which they cannot pass; and fit it is that Public Bodies should have boundaries, restraints, and limitations, since they are equally liable with Individuals to be misled by passion, fancy, or caprice.

With what colour of justice could the Assembly tax their Constituents, and apply their money for purposes altogether foreign, under pretence of a power to raise money upon the People, for services or purposes immediately arising within or incident to the Provinces? Their Authority is *local*; and as their Laws are only made for their own internal Government, and extend not beyond the Jurisdiction to which they refer, so
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in like manner must every Legislative Act bear a local reference, and every Grant or Appropriation of Money must, generally speaking, be made for real and substantial services performed to the Province. They have no more right to raise money upon *constructive* ideas of benefit and service; than the Judges have to declare *constructive* Treasons: No; the Law has defined and clearly pointed out the crime of Treason, and the Constitution has as precisely ascertained the power of the Commons to give and grant.

It may be said, that the Assembly have many times voted sums, by way of Relief to their Sister Colonies labouring under any general Calamity; and hence it may be inferred, that they have a right to dispose of the People's Money, and apply it to other uses than for their own immediate service. I readily allow the first part of the position, but I deny that so general a conclusion can be fairly drawn from it. The misery and sufferings of our fellow-creatures demand our aid; Humanity dictates the lesson; Nature pleads for it; and Gratitude requires it; and therefore this case is necessarily excepted out of the general maxim: besides, what one Colony gives to another is in some respect a kind of loan; inasmuch as the like return is made to our benevolence when Distress visits our own borders. Neither this case, nor a Grant of Money upon a Royal Requisition, can afford the least pretence for a Vote, grounded upon merely an *ideal* benefit, such as the Order states.

It is true, that the Commons are to judge and determine in what cases they will or ought to give and grant; but surely it is implied, that they shall not arbitrarily and injuriously appropriate the Public Treasure, and thereby abuse the confidence reposed in them by the People.

Surely it will not be contended, that they have a right to impoverish the Members of the State, when the necessities of Government require no such exertions. Admit, for a moment, that the Assembly are possessed of a power to apply the Money of their Constituents to any purposes generally, and we must also admit, that they may do so to any Amount and Extent whatever; and then, I think, the *Represented* are in a state of absolute Vassalage and ruinous Dependence.

Is it not an Arbitrary Act to tax the Estates of the Subjects in this Colony to support a *private Club*, a *Tavern Club*, a *faction Club*, upon any specious pretence or colourable excuse?—Is it just, fit, or reasonable, that Burthens should be laid upon the People, to serve a job or gratify a whim?—Can Men suffer themselves to be so deluded, and amused, to their loss as well as shame?—Are chains more tolerable, because imposed by our own consent?—Can Men tamely surrender their Reason, and the power of Judging for themselves, by a single *act of Delegation*?—Was it their sense and meaning, to furnish their Constituents with rods for their own backs; and are those whom they chose to represent and to protect them, to be their Executioners?—Is the Colony arrived to full *maturity*?—Has it no wants of any kind?—Does it stand in need of no Supplies for Beneficial Establishments; for the Encrease and Advancement of the Products of the Soil; the Extension of its Commerce, and the Promotion of useful Knowledge? Are the several Counties so well supplied with Churches, Chapels, and Spiritual Teachers and with Schools for the Instruction of Youth; or, Are the Public Roads, Bridges, Causeways, and Fortifications, in such perfect state and condition; and are the circumstances of the Colony in general so extremely easy, that the
Treasury

Treasury meet only to *receive*, and not to *pay*? If these things are so, we may overlook, for once at least, the *idle prodigality* complained of: but if these questions cannot be favourably answered, Every Man in the Community is injured to a certain degree; and every Sum diverted from their Service, is an Act of real Tyranny and Insolent Oppression.

For my own part, I must candidly confess, that I never reflected in my mind upon this subject, but I found two very different passions excited in my breast, *mirth* and *resentment*. The comical part of the story is, That a Collective Body of Men, in their *grave* and *senatorial stations*, should persuade themselves, that *Magna Charta*, the *Habeas Corpus Act*, and the *Bill of Rights*, stood in need of a little propping from a Club of Men whose standard was set up at the London Tavern. That the King, Lords, and Commons of England were either remiss in their Duty to the State, or indifferent about it; that all the Virtue and Public Spirit in the Nation had *squeezed* itself into the London Tavern; and that nothing could save Britain and America, but a *little ablution* at that sacred spring; are such absurd and laughable circumstances, that no Age or Nation can furnish a Precedent so superlatively ridiculous and weak! Enjoy the laugh for a moment—suppress your anger, and image to yourselves a set of sedate sensible Politicians, with big wigs and grave faces, unanimously passing such a Vote, and such an Order, by the plenitude of their own power.

View the case in a serious light, and it is impossible to sit calm and unmoved at the relation. What could influence Men to step forth, and, by an unconstitutional and unwarrantable stretch of Power, to misapply the Public Money, and at
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the same time offer so gross an insult to His Majesty's Government both at home and abroad?

The House of Commons have never gone farther than passing a Vote of Credit upon a requisition from the King; and That for Public and Beneficial Purposes, and on Great and Emergent Occasions: but this Order can never be considered in the nature of a Vote of Credit; for it is literally issuing Money out of the Treasury, the application whereof has either been directed by Law, or the same is part of certain Surplusses arising from different Funds, which though raised, exceeds the Necessity for which the same was granted, and therefore remains in the hands of the Treasurer, to be accounted for as the respective Laws limit and appoint. It is therefore extremely evident, that such Surplus Money is a kind of *sacrum depositum* in the Treasurer's hands, which only the United Branches of the Legislature can appropriate or issue. What is once granted to His Majesty, cannot be diverted from the uses to which it is meant to be applied.—No one in his senses can contend that it may: and it is equally absurd for one Branch of the Legislature to touch Surplus Money; not only because the same has been actually granted, and to the perfection of which Grant the Three several Branches of the Legislature had unitedly concurred, and, therefore, the like Powers only can direct a different appointment respecting the same; but also because a Grant, till vacated by as solemn an Act, must stand good, and will continue to bind the Money, so as to prevent any appropriation whatsoever, till a Law directs it. And it is a joke to say, that Surplus Money may be borrowed in this loose way, upon an idea, that what is not wanted reverts, as it were, (by a kind of ingenious fiction) in the People, or in their Representatives in their behalf.

behalf. For, How can this fiction operate as a sort of virtual Repeal of the Law which granted the Sum? or, At what moment of time, and by what kind of *secret Magic*, was the same effected? —For, being once vested in the King, by Law, how can any part thereof become divested by a mere partial Order of only the Lower, and most subordinate, House of Legislature? Weak men will dispute any point, however idle and absurd; wise men will both reason and dispute; and fools will dispute, and refuse to be convinced. That His Majesty's Council have something to do in the Money-concerns of the Colony, appears by an Act of Assembly, passed the twentieth of September, 1721, entitled, "An Act for Appointing a Public Treasurer, and other Public Officers;" by which they are made liable to be called to account by each, and either, House of Assembly, and their bonds put in suit by the direction of either House, &c.

Now, to shew that the Ordering Surplus Monies to be paid upon a direction of the Commons House alone, cannot be altogether proper, I must take notice, that divers Laws make provision in such cases; and particularly the General Duty Act, passed the fourteenth of June, 1751, respecting the Duties imposed thereby, viz. That "what-ever Surplus shall be remaining of the said Duties, after paying the several Demands and Outgoings by this Act directed, every such Surplus shall be carefully retained by the said Public Treasurer, until appropriated by the General Assembly."

Similar Provisions are made by divers other Acts; which demonstrably prove, that Surplus and unapplied Monies in the Treasury cannot be drawn thereout by a Vote and Order of the Commons House alone.

A little reflection must convince every Man, that the Power contended for by the Commons House is of so dangerous a nature in itself, as affords a strong argument against the existence of such Power; for if the Lower House may so Vote and Order Monies out of the Treasury, which are granted to His Majesty, and that by their own Authority, may not the same Power be assumed by a Governor, or the Council, or both unitedly, to answer a Job, or to accomplish a favourite Plan, independent of the People's Representatives?—and the rather, when it is considered that, by the King's Twenty-second Instruction, as entered in the Council Journals, the Governor “is directed not to suffer any Public Money whatsoever to be issued and disposed of, otherwise than by Warrant under his Hand, by, and with, the advice and consent of the Council.”

If the matter is taken up on ideas of common sense, it is doing no violence to our understandings to suppose, that a Governor may issue Monies by his own Order, as representing His Majesty, to whom the same were granted; but that the Commons, who have granted the Money, shall still retain a power over it, repossess themselves of it, and apply it at their pleasure, for a good reason or a bad one, or for no reason at all, surpasses all human comprehension.

Happy, however, is our case, that the present subject does not rest upon Opinion merely, but is determinable by the Principles of that Constitution, which ought to be the pride and glory of all the Subjects of His Majesty's Dominions. The true excellence * of the English Government consists in this, “that all the parts of it form a

“ mutual check upon each other.—In the Legislature, the People are a check upon the Nobility, and the Nobility a check upon the People, by the mutual privilege of rejecting what the other has resolved; while the King is a check upon both; which preserves the executive power from encroachments.”

In this view it is, that His Majesty has interposed His Royal Authority, by an *Additional Instruction* to His Governor, grounded upon an actual, dangerous, and unconstitutional Encroachment of the Commons House of Assembly, in the manner stated in these sheets.—This has been done by way of *check*; and in order to prevent a practice so unwarrantable, and that the wound thereby given to the Constitution may be healed, the Instruction must be viewed in the light of a *timely Correction* by the Executive Power, and as a *call and admonition* to a Third Branch of the Legislature to return to first principles, from which they had so improperly departed; and is also intended to prevent in future, what seems, to the Royal Judgement, an undue Encroachment: it is, therefore, injurious to consider this Act of Government merely as a Direction to the Commons House of this Colony, how, and in what manner, they shall frame and originate a Money Bill; because the King only tells them of their departure from the Constitution; points out the proper practice, as grounded thereon; and, by thus interposing, and prohibiting His Representative from giving His Assent improperly, and upon unfit occasions, as also to remedy the evil complained of with so much justice, His Majesty has done no more than exercised *that Act* of Sovereignty given Him by the Constitution, for the purpose of maintaining the Just Balance of the State,

The distinction is extremely obvious, between an Instruction given as a rule of conduct to the several Branches of the Legislature, upon a point of departure from acknowledged principles, and an Instruction which contains new-fangled ideas, not warranted by, or known to, the Constitution. — The one is only a *Remembrancer*, as it were, reminding them what the Constitution is, and giving them a rule for adhering to it; which is the regular check lodged in the King's hands to prevent Encroachment; whereas the other would be irregular, and favour of the nature of a trespass: and a *novel Invention*, from whatever quarter, is an innovation upon the other Branches of the Legislature. Keeping these observations in view, every popular argument against the King's Instructions, as being only a rule to His *Governor*, and that the People are not to be *Instructed*, must fall to the ground, as inconclusive and foreign to the point.

I know that many People, finding no warrant for the practice contended for by the Assembly, either in the Proceedings of Parliament, or in the Constitution of our Country, have immediate recourse to the usage of the Province for a series of years, without controul or interruption; and to those who skim over a dispute, without weighing the force of the several arguments, this assertion may be considered as a good plea in favour of the practice; — and therefore I think it my duty to offer a few words on the only feasible pretence which the advocates for it can set up.

It is very true, that, for several years antecedent to the year 1737, the Commons House have ordered Monies to be advanced by the Treasurer, without the concurrence of the Council and assent of the Governor; but from that period, no such mode prevailed, till the year 1751, or

1752;

1752 ; and since that time many Orders occur, some sent for concurrence, and many not. This difference of proceeding points out a distinction ; for where they have ordered Monies arising from appropriated Funds which have not been wanted, the Council's concurrence and the Governor's assent have been applied for : but where the Orders have been general, they have gone upon a sort of idea, That there were Surpluses and Balances sufficient to satisfy the Order without any intermediate Inconvenience, till the same could be replaced by a Public Tax-Bill ; and I cannot in any other way account for the course of practice which has at different times prevailed.

In order to combat these Facts, let us previously reflect what slow advances *Infant Societies* of Men make towards Regularity or Perfection ; that in the first outset they are occupied in providing for their necessary wants, and securing their protection ; the niceties and punctilios of Public Business never enter their heads, till they have brought their Colony to such an outward state that they feel some *Self-conceit* has crept into their hearts ; then it is that Men begin to give the polish to their Acts, and to be emulous of Fame : the Precedents, therefore, of new Communities are of very little weight ; and whatever rank they bear, the influence they ought to have must be proportioned to the prevailing Uniformity of Practice, which is the true badge of their Importance ; for when there is any long Interruption to, or Discontinuance of, a Practice, the fluctuation creates Embarrassments, and puzzles the Understanding, without leading the Mind to any determinate conclusion on the point.

But granting for once, that a particular mode has been adopted for a series of years without

interruption or controul, Time gives no sanction to Acts illegal in themselves; and when Inconveniencies arise, and the *Blot* is hit, the Merit of the Practice is then called in question, and it is tried and must be determined by the Laws and Constitution of our Country. In like manner Public Rights, of what nature soever they are, (tho' dormant for a time) can never be extinguished, except by the Power that first created them; and the continuance of a practice on no better foundation than *Indulgence*, confers no permanent and durable title; mere permission being a tenure at will: the Man is in possession one month, and the Lord of the soil may eject him the next.

The instances wherein the pretended practice has prevailed may be safely admitted, to shew the impropriety of the like practice in the present case; for every one will readily allow, that altho' it may be pardonable for Public Bodies to relax somewhat in favour of the State, yet it by no means follows, that they may do so on occasions unworthy of Indulgence. The instances which the Assembly can cite for granting Orders by their *sole Authority*, refer to Payments to their Governor for Indian Uses, Local Services, Salaries of Clergy advanced on particular occasions, Furniture for the State House, Books for the Assembly, for the Silk Manufactory, and the like. And shall such Precedents be urged in defence of Orders made in like form on behalf of *Clubs*, and *idle fantastic Measures*? for conceits of flimsy Politicians, and to indulge a Spirit of Faction and Disorder in the Metropolis of our Sovereign's Kingdom? Can we with any face plead Precedents of honourable tendency to support the most wanton acts of passion and intemperance? Is it possible for men to be so blinded by prejudice and passion, that Precedents

dents for doing real and substantial *Good* shall be urged in argument to promote the cause of *Evil*? Alas! Reason has but little influence in the favourite schemes of State Intrigues! All the kind and benevolent affections are at rest; the souls of men are perturbed! Disorder and Distraction take the lead! and every faculty is awakened to breed confusion and distrust! It is amazing to reflect what baneful effects are wrought by Political *Manœuvres*! the Social and Benevolent Spirits retire; and men for the most part lose their Humanity together with their Sense and Understanding. Oh *Politics*! how ye deform the Human Soul! blunt Natural Affection! sow the foul Seeds of Hatred and Ill-will! confound the Laws of Right and Wrong, making our Journey through Life a painful Pilgrimage indeed!

It is a matter of doubt with me, whether the folly of the Vote, or the folly of persisting in it after conviction of its impropriety, is the greatest. There is something very singular in the whole of this affair; for I have been told, that those who adopted the measure, and decline the defence of it; who frankly own, in their private situations, that nothing of the like kind will be done in future; who very unreservedly admit it was an hasty business, and that they heartily repent it; are of sentiments expressly opposite to these declarations, in their Public Station; and with the utmost vehemence declare, that they never will give up the point, or pass a Tax-Act whilst the Royal Instruction stands as an obstacle in the way. If the measure cannot be justified upon the Principles of the Constitution, common Prudence directs us quietly to relinquish what we cannot hold; and it is no disgrace for Public Bodies of Men to retract any Tenet, especially

especially when it is either dangerous or improper to maintain it. The dispute lies between the King and the Delegates of the People; and the question now is simply this: Whether the King is to recall or vacate his Instruction; or the People submit to a check for an unconstitutional Application of the Public Treasure? Justice as well as Prudence require us to yield the point. On firm ground we may safely tread; but to persist in opposition to a timely and regular interposition, is to me an obstinacy highly culpable, and altogether unbecoming. Perhaps to high Spirits, concessions of any kind are mortal stings; but if there must be a degree of condescension in some quarter, before tranquility can be restored to an afflicted Province, surely it is most reasonable to expect, that Duty to the King should influence the People to make the first advances; and the rather, as an opposition in the present case will inevitably affect the most essential Interests of the Colony, by retarding its Growth, weakening its Credit, and encreasing its Distractions. — No part of the King's Dominions can be injured by this local difference, nor is the great Machine of Government in the least affected by it; the punishment is as local as the dispute itself; the People of the Colony alone suffer in the cause, which no wise man can think a good one.

It is rather an odd circumstance, that we have no certain information what became of the 1500l. after it was paid into the hands of the *Patriotic Club*. That it was spent remains no doubt; but How, is the great mysterious Question. Whether it was applied to pay the *Tavern Score*, or to satisfy the hungry Creditors of some *half-starved Patriot*, are problems to puzzle the wise heads of those who gave it; but to me nothing

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is more strange and unaccountable than the great reserve which all Parties have maintained respecting this *unprecedented Benevolence*. I have not been able to learn what the venerable Supporters seriously thought in relation to this Gift. That they laughed at it, and enjoyed the joke, I can readily suppose: that they passed a sneer upon it, and pronounced it an *idle Affair*; that they ridiculed the Credulity of the Donors, and admired their Faith, I can easily believe; but it is not possible to carry our conjectures any farther.

Some inquisitive folks have been very restless to know what sort of grateful acknowledgments the Club have paid to the House of Assembly for this generous Donation; but it is as curious to reflect, that the *Silence* is equally as *sullen* on one side of the water, as it is on the other. I cannot learn from authority, that even the poor *unavailing Tribute* of Thanks has been returned for all this *Legislative Kindness*. There is a great shamefacedness on both sides, in the course of this Transaction. The Club either knew not how to express their sense of the Favour; or their sincerity, as men, would not allow them to pay a sacrifice which (tho' gainers by the Grant) their Hearts must disapprove; and I am firmly persuaded in my own mind, they were afraid to expose themselves by returning thanks: and the House, I have reason to believe, are better pleased without them.—Thus it is when Public or Private Bodies of Men play a loose Game; both sides are always shy, and the only way to avoid a total rupture is to preserve, if possible, the same kind of happy distance that has been between the House and the Club; there being no real Danger, except when jarring Bodies meet in contact.

The money has been voted and spent, and the Society which received it is now no more! The *Great Charter*, the *Bill of Rights*, the *Habeas Corpus Act*, the *Constitution itself*, are left to the wide World to fight their own Battles, and maintain their own Ground! The *Supporters* have given way, and their strength is as exhausted as their Purse! Their Friends the House have nothing more to give; and 'tis thought they have long repented what is given! What a melancholy state of things is this! But how blessed a condition, compared to the miserable and forlorn situation of a Colony which now feels the evil effects of ill-directed Zeal!

I come now to consider a new stroke of Provincial Politics, and the last-distinguishing Effort of the Colony of South Carolina, in the great attempt of establishing a Character of Originality; an idea so very flattering to the Human Mind!

The Legislature stood prorogued to the Month of August 1773; and the old obstacle still being in the way, and the Lieutenant Governor seeing little prospect of doing business, opened the Session by a Message to each House, to save a piece of idle pageantry, and the formality of a public Speech.

A few days passed, and one or two Bills were sent by the Lower to the Upper House, which were ordered to lie upon the table for the most cogent and prudential reasons.—The Upper House, anxious for the Public Credit, and deploring the miserable state of the Colony Affairs, owing to the above unhappy dispute, judged it highly expedient to enquire into the true state of the Public Treasury, in order to guard against Accidents, and to provide in due time for the Public Safety. One of the Treasurers being examined

amined, gave such a melancholy detail, that the Upper House addressed the Governor upon the subject, for the purpose of calling in 50,000*l.* Currency, in order to keep the Treasury in a proper course of circulation. As this Enquiry discovered the weakness of our State, the Commons House entered into some violent Resolutions; and by a message to the Governor on the subject of the Council's Address, attempted to charge them with having given an improper state of the Treasury Accounts: but the Upper House not choosing to submit to the imputation of having deceived the Public, prosecuted the Enquiry still further, and demonstrated the Truths contained in their Address, which the Assembly have not since attempted to disapprove. In the course of this Session, a Protest of an extraordinary nature was entered in the Upper House Journals by Two Members; which having a manifest tendency to reflect upon the Proceedings of the House, and the same being printed by one Thomas Powel in the South Carolina Gazette, without any leave or permission from the House, this matter was taken up as a gross Contempt, and Breach of Privilege; and the Printer being sent for and acknowledging the fact, and declining to give proper satisfaction to the House, he was thereupon committed by virtue of a Warrant under the Hand of the President, Sir Egerton Leigh, Baronet, the 31st of August 1773; which Warrant was by the express Order of the House.

—On the 3^d of September the said Thomas Powel was discharged from his confinement, upon a return of the Cause of Commitment by the Sheriff on the back of an Habeas Corpus, issued by the Honourable Rawlins Lowndes, Speaker, and George Gabriel Powel, Esq. another Member of Assembly, pursuant to an Act of Assembly

passed the 12th of December 1712, empowering Two Justices (*Quorum Unus*) to put in force the Habeas Corpus Act to all Intents, Constructions, and Purposes, as fully as the same can be put in execution in his Majesty's Kingdom of England. The Justices judicially declared the Council to be no *Upper House of Assembly*, and therefore held the Commitment illegal, and of course discharged him. The Council applied to the Assembly for redress against their Members; but they, instead of complying with the request, entered into several *unprinted* Resolutions, avowed the same Doctrine which the Justices had broached, approved their Decision, returned the Thanks of the House to them for the same, and agreed to address the Governor to suspend those Members who had voted the Commitment; and also to address His Majesty for their Removal: and on the 13th of September they addressed the Governor accordingly, who very properly judged the subject too important to be determined by him; and the rather, as the affair is to be laid before the King. The Council, finding such new Doctrines adopted by the Lower House, and perceiving that the Constitution was, in effect, subverted by these proceedings, lost no time in stating these Grievances in a suitable Address to His Majesty: they likewise addressed his Honour the Lieutenant Governor the same day, and requested him to transmit the Address, and other papers referred to, to the Secretary of State for the American Department, in order to be laid before His Majesty. The Lieutenant Governor, by his answer, undertook to transmit them according to their request; and this Session being a most *noisy and disturbed one*, and every popular subject being brought to a happy conclusion, though somewhat interrupted by the Lieutenant Governor

Governor declining to Suspend, agreeable to the modest expectations of the Lower House, they desired leave to adjourn till January next, to which time they stand adjourned accordingly.

Having given a Narrative of the Proceedings of this extraordinary Session, I shall now examine the pretensions of the Council to take upon them the Powers of an Upper House in the Legislature of this Country, and make some general Observations on the Constitution of the Colony, as formed on the British Model.

Upon the absolute Surrender of the Soil by the Lords Proprietors to his late Majesty, in the year 1729, for the Considerations agreed on, and confirmed by Act of Parliament, the Colony of South Carolina vested in His Majesty; and consequently he had a full right to give a Constitution, and to form such Establishments as were agreeable to the Laws and Practice of his own Kingdom. He was pleased therefore to appoint a Governor by Commission under the Great Seal of England, by which his Powers were precisely ascertained, and where he was authorised to call Assemblies composed of the Freeholders of the Colony, &c.; and the very last Commission, which was to Lord Charles Montague so lately as 1766, contains the following clause, viz.

“ And that you, &c. with the consent of
 “ our said Council and Assembly, or the major
 “ part of them *respectively*, shall have full Power
 “ and Authority to make, constitute, and ordain
 “ Laws, Statutes, and Ordinances, for the
 “ Public Peace, Welfare, and Good Government
 “ of the said Province, and the People
 “ thereof, and such others as shall resort there-
 “ to; and for the Benefit of Us, our Heirs
 “ and Successors; which said Laws, Statutes,
 F 2 “ and

“ and Ordinances, are not to be repugnant, but,
 “ as near as may be, agreeable to the Laws and
 “ Statutes of this our Kingdom of Great
 “ Britain.”

The King's Pleasure is also more largely and specially set forth in a Body of Instructions, containing every necessary Power and Rule of Direction for the better Government of his Colony; and the Names of all the Council are particularly specified in the said Instructions.

The Members of the Council are severally appointed by the King's *Mandamus*, or *Letter* to his Governor, directing him to swear in, and admit such a one to be of His Majesty's Council of the said Province; and by virtue thereof, they are merely Counsellors of State, to whom the Governor for the time being applies for advice in cases of weight and moment.

This Council of State, consisting of Twelve Persons, are named in the King's Instructions to his Governor, as expressed in the Clause above-mentioned; and this additional plan of Duty pointed out by His Majesty, is surely no more inconsistent or incompatible, than the power given to the Governor and Council by Act of Assembly to be a Court of Chancery can be so deemed. One sett of men may have various Jurisdictions; and the circumstance of the same People acting in separate and distinct situations may be as easily reconciled, as that a Priest shall be at one time in the *Desk*, and at another in the *Pulpit*: the nature of the Offices differ in the *Mode* of performance, but the *End* is just the same.

The Clause above-mentioned almost in positive words declares Three distinct and separate Branches of the Legislature: “ That you, (meaning the Governor) with the consent of our
 “ said Council and Assembly, or the major part
 of

“ of them *respectively*, shall have power and authority to make, ordain Laws, &c.” which terms as *individually* distinguish, and mark out, Three independent and distinct States, as language can express.—Besides, these different Powers are derived to them by distinct Instruments: those of a Privy Council, by Mandamus; and those of a Legislature, by the King’s Commission and Instructions to His Governor. I never was able to comprehend, how the Commons House of Assembly presumed to liken themselves to the House of Commons of Great Britain, and then drop all sight of that Model from which the other Branches of our Subordinate Legislature are manifestly taken; for it is by virtue of the Governor’s Commission that the Freeholders of the People are called in Assembly, and by the King’s writ, signed by the Governor and the Members of His Majesty’s Council; and therefore all those eminent Rights they so much value themselves upon, were, in fact, originally conveyed to them through the very same medium as those of the Council in Assembly, which are now fixed and established by Laws suited to our local circumstances, and which were framed under the King’s Royal Prerogative and Licence. Our Constitution is *derivative*, and entirely flows from the Crown, is wholly *ex gratia*, and, therefore, subject to such modifications upon Constitutional Principles, as His Majesty shall, from time to time, in His Royal Wisdom, see proper and expedient; provided, also, that they are not repugnant to any subsisting Laws.

The Rights and Privileges of the Commons House are neither created nor recognized by any Statute of Great Britain; they arise, as it were, by grant from the Crown; their Legislature owes its establishment to the King; and every claim they

they set up, springs to them from the same medium through which the Council derive theirs. This being the true state of a plain fact, it follows as a consequence, that when the Crown gave permission to call an Assembly, they surely might appoint a Council; and lawfully invest them with the powers expressed in His Majesty's Commission and Instructions; and the rather, when we call to mind that the People of this Country made humble suit to His Majesty King George the First, in the year 1721, to take them under His Royal Protection and Government, by renouncing their Charter Rights under the Proprietary Constitution; and this change being effected at their own instance, and afterwards by a clear purchase on the part of the Crown for a valuable consideration, and by an absolute surrender by the Lords Proprietors, in 1729, the Power who embraced them in order to protect them, could alone give motion and activity to them, as a Colony, or distant Member of the Parent State.

When the Crown had thus taken the Government of this Colony upon them, and had appointed Francis Nicholson, Esq. Provisional Governor thereof, the Assembly passed an Act of Recognition, on the 18th of August, 1721, which recites, that "whereas His Most Sacred Majesty "had been graciously pleased, at the humble desire and request of His faithful Subjects of "this Province, to take the same under His Majesty's most gracious and immediate Government and Protection; and had also been pleased to Commissionate, under the Great Seal of "Great Britain, Francis Nicholson, Esq. Governor, &c. over the same, *with full Powers to "call a General Assembly, &c.* and that they with "one voice and heart did acknowledge His Majesty's

“ Majesty’s *most lawful and undoubted Right* to the
 “ said Province; therefore, in gratitude, they
 “ prayed, that it might be enacted by His Ma-
 “ jesty, by, and with, the consent of the Gover-
 “ nor, Council, and Assembly, that they do re-
 “ cognize His said Majesty to be of right, and,
 “ by the Laws of Great Britain, is Sovereign
 “ Lord and King, &c. &c.”

This Act of Recognition expressly shews, that the *Powers to Call a General Assembly*, originated with the King himself. With what face, then, can Gentlemen deny those Rights to His Majesty’s Council (who bear a share in the Legislature of the Country under the same Authority by which they themselves are allowed to sit), so essentially necessary to support their proper dignity and consequence as Legislators?

By the eleventh section of a Provincial Act, passed in 1721, it is enacted, “ That the Mem-
 “ bers of Assembly chosen by that Act, shall
 “ have as much Power and Privilege, to all
 “ Intents and Purposes, as any Members of As-
 “ sembly theretofore had, provided the same are
 “ such as are according to His Majesty’s *Thirty-*
 “ *fifth Instruction.*” Can any thing more decisively point out the sense of that Dependence upon the Crown, which the People at that time of day entertained, than this extraordinary Provision, which virtually declares the Power of the Crown to bind us by Instructions?—And the Act in a manner incorporates the same, by excepting those cases of Privilege which this Instruction so flatly disallows; and in points, too, of the most delicate nature, and which remain undecided upon to this day, between the Lords and Commons of Great Britain.

The Thirty-fifth Instruction to Governor Nicholson, which I believe is continued to the present

sent day, runs in the following words : “ And
 “ whereas the Members of several Assemblies in
 “ the Plantations, have frequently assumed to
 “ themselves Privileges no ways belonging to
 “ them ; especially of being protected from Suits
 “ at Law, during the term they remain of the
 “ Assembly, to the great prejudice of the Cre-
 “ ditors, and the obstruction of Justice ; — and
 “ some of the Assemblies have presumed to ad-
 “ journ themselves at pleasure, without leave from
 “ our Governor first obtained ; and others have
 “ taken upon them the sole framing of Money-
 “ Bills, refusing to let the Council alter or a-
 “ mend the same ; all which practices are very
 “ detrimental to our Prerogative : If, upon your
 “ calling an Assembly in South Carolina, you
 “ find them insist upon any of the abovesaid Pri-
 “ vileges, you are to signify to them, that it is
 “ our express Will and Pleasure, that you do
 “ not allow any Protection to any Member of
 “ the Council or Assembly, further than in their
 “ persons ; and That only during the Sitting of
 “ the Assembly ; and that you are not to allow
 “ them to adjourn themselves otherwise than *de*
 “ *die in diem*, except for Sundays and. Holidays,
 “ without leave from you, or the Commander in
 “ Chief for the time, being first obtained.—It
 “ is also our further Pleasure, that the Council
 “ have the like power of framing Money-Bills
 “ as the Assembly ; and you are expressly enjoined
 “ not to allow the said Assembly, or any of
 “ the Members thereof, any Power or Privilege
 “ whatsoever, which is not allowed by Us to the
 “ House of Commons, or the Members thereof,
 “ in Great Britain.”

The Privileges expressed in this Instruction were enjoyed by the Council, without Interrup-
 tion, till 1735, when the Assembly claimed a
 sole

sole and exclusive Right of framing Money-Bills, and which they have, at different periods since that time, continued to assert and maintain.

This Instruction relates entirely to Legislative Business, and the Privileges of the Members of Assembly, and forbids the Governor to allow protection to any Member of the Council or Assembly, further than in their Persons, &c. Now, as mere Counsellors protection is out of the case, neither has the framing of Money Bills any thing to do with their station, as Members of the Privy Council; from whence it is evident beyond a doubt, that the Council form one Branch of the Legislature of this Country, and must be viewed as a separate and distinct Body both from the Governor and Assembly, because the Council have a concurrent power with the Assembly to frame Money Bills, &c. which shews a *distinctness* of Legislative Jurisdiction; and the Governor (till Assent is necessary) has no part allotted him to act, except that he is to keep the Members within due bounds of Privilege under the terms of his Instruction.

Privilege is a term inapplicable to the Council sitting as a Privy Council; for in that character they possess not a single privilege by their Constitution, and very few by the Laws of the Province; and all the privileges of His Majesty's Privy Council at home, consist in that security which certain Laws give them against attempts and conspiracies to destroy their lives. The term Privilege, therefore, in this Instruction, points directly to the Members of Council exercising Legislative Duties; in which station alone, the Council apprehend they are entitled to any privilege or personal protection.

That no man may entertain a conceit, that in reciting and discussing this *Thirty-fifth Instruction*, I thereby mean to set up the King's Instructions generally to His Governors in America, as Laws and Constitutions by which the Colonists are or ought to be governed; I shall plainly tell my Reader all I wish to infer, viz. That the King when he gave Power to call an Assembly, at the same time, and by the same public Instruments, established in His Council a Right of Legislation, as a distinct Body from the Commons House: That the whole scope of the King's Commission and Instructions manifestly shews, that the Assembly derive their powers from the same fountain that the Council do; that our Government is clearly derivative; and that, without the King's Grace, we had been destitute of any Constitution whatsoever: That our Provincial Legislature, by the first Election-Act, passed in 1721, after His Majesty had taken this Colony under his own immediate protection, plainly shews, that they entertained this sense of the matter, by declaring that the Members shall have as much privilege as heretofore, provided the same are such as are according to His Majesty's *Thirty-fifth Instruction*. What is this exception, or saving, but a clear acknowledgement that the King, by His Instruction, might direct in the way stated, that the power of modifying the Government of His Colony was in His hands? And I appeal to the uniform practice, from 1721 to 1735, as an irrefragable argument in support of the Council's Legislative Rights, when they were allowed to frame, alter, and amend Money Bills, by virtue of this Instruction.

It is a rule in construing a Statute *, to pay great regard to the construction which the Sages of Law, who lived about the time, or soon after, it was made, did put upon it; because they were best able to judge of the intention of the Makers thereof: for it is a maxim, that *Contemporanea expositio est fortissima in Lege*. Now I produce the King's Commission and Instruction, upon the establishment of this Colony as a Royal Government, to prove His Power over it in the instances mentioned; and agreeable to the above maxim, I give you not merely judicial decisions, but the judgment of the Legislators themselves who lived at that time, implored the protection of that Power which they afterwards expressly acknowledged, who adopted the Instruction which so limited and restrained them, and so mightily enlarged and extended the powers of the Council, and who submitted to these Royal Regulations by conforming their practice wholly to them.

That the Council have a Legislative Right, as a Second Branch, appears, not only from constant experience, but also from the stile and expression of our Laws.

In 1722 was passed an Act with the following title: "An Estimate † of the Charges of the Government, that is and will be due on the twenty-fifth of March next, 1723, to be provided for by the General Assembly, and agreed to by the Committee of *Both Houses* appointed for that purpose."

An Act of Assembly passed the fifth of February, 1736-7, for laying an Embargo on Ships or Vessels; and the Preamble opens in the following words: "Whereas the *Legislative Powers* of this Province have received Advice, that a

* 2 Inst. 11, 136, 181.

† Trott's Carolina Laws,

“ dangerous Scheme is formed by certain Subjects of the King of Spain, &c.”

Many of the Laws passed at that time in the Enactment part say, “ By the Governor, by and with the Advice and Consent of the Council and the Representatives;” and others express, “ by the Governor and the Council, and the Representatives convened in General Assembly.”

If we examine the King’s Disallowance, or Repeal, of the Acts of Assembly, about the same period, this point will be more clearly established. The Repeal opens thus*: “ Whereas by Commission under the Great Seal of Great Britain, the Governor, Council, and Assembly, are authorized and impowered to make, constitute, and ordain Laws, &c. for the peace, welfare, and good government, of the Province, &c.”

The Governor has an Instruction requiring him to observe, that in passing all Laws, the style of Enacting the same be, *by the Governor, Council, and Assembly*.—And to what end was such a direction given, but to preserve *that style*, which so clearly expressed the distinct Bodies, whose respective concurrence and assent were declared necessary for making Laws, &c.? The Governor is likewise enjoined to transmit home all Laws, with the several dates, or respective times, when the same *passed the Assembly, the Council, and received his Assent*. Is it possible to express the *Individuality*, if I may be allowed the phrase, of the several Branches, in more clear and positive Terms? Do not the words denote Three separate and distinct Parties; and That too as precisely as any Deed tripartite in Law? Is it not evident beyond a doubt, that

every Act must pass the Assembly, and the Council, and have the Governor's Assent to the perfection of it? These different stages strongly point at the *Model* from which our Subordinate Legislature is taken; and the features bear a strong resemblance to the Constitution of another Country, as those of an Infant can be likened to the stronger lines of an aged Parent: A similitude may be traced in both cases, with only certain circumstantial Differences; such as must necessarily distinguish Infancy from Age, Maturity from Childhood, Strength from Weakness.

By an Act of Assembly passed in the year 1736, for ascertaining Public Officers Fees, those of the Clerk of the Council are also enumerated; and in a separate Division next immediately following is this Title:

“ The Clerk of the Council in Assembly his Fees.”
Amongst the several allowances are, for “ a Warrant of Contempt, Ten Shillings; and a Release-ment therefrom, Five Shillings.”

By another Fee-Law passed the 7th of May 1743, the like provisions are made for the same Officer, with an Increase of Ten Shillings on a Warrant of Contempt. True it is, that this Law has never been confirmed by his Majesty; but it proves as strongly what it is cited to shew, viz. the Sense of the People's Representatives, in relation to the Rank and Condition which the Council hold in the Legislature of the Colony.

Many of the Acts of Assembly sufficiently evince, that the Council were till lately ever considered as one Branch of the Provincial Legislature; and the language of the Lower House on different occasions confirms this Doctrine, if any thing is wanting to support it. I appeal to their own Journals of the 11th of May 1754, wherein it will appear, that the Assembly, in their

their Address to the Governor, take notice of his Affection and Regard for the Welfare of the Province lately expressed in his Excellency's Speech to *both Houses*.

I must here desire my Reader to go back some pages, and take another view of the King's additional Instruction to his Governor, and he will there find that His Majesty, throughout the same, denominates the People's Representatives by the stile of the *Lower House*; which, *vi termini*, implies an Upper House or Superior Body, to which that Title must bear immediate reference and respect. Upon the whole, I think these Conclusions may be fairly drawn from the several Facts above-stated: That it was His Majesty's Intention to assimilate the Constitution of this Colony to that of Great Britain, so far as the local circumstances and situations of things could possibly admit: That it was his Royal Will to establish Three distinct States, in the Persons of a Governor, a Council, and Assembly: That divers Acts of the Colony Legislature maintain the same Distinction: That Uniform Experience hath preserved the like Idea; and that the Legislative Powers of the Council have been virtually, and almost expressly, recognized and declared by positive Laws, and by the Language and Stile of Public Papers, as appears by the Journals of Assembly.

It may be proper further to observe, that Bills have originated in the Council, as well as in the Assembly; though it must be owned, the practice has not been frequent: however, the Assembly, after a second reading of a Bill, always send it to the Council by two of their own Members; and when twice read, and perhaps altered and amended, the Council return it by the Master in Chancery. When it has undergone a third reading, and been passed by the Assembly, it is in like manner

manner brought up again to his Majesty's Council, who, upon the third reading, either pass or reject the same; and if passed, it is carried back to the Commons House, who direct the same to be ingrossed: and at the end of the Session the Three States, viz. Governor, Council, and Assembly, meet in the Council Chamber, when the Speaker of the Assembly reads the Title of the Act, and then presents it for the Governor's Assent: this being given, the Speaker signs it, as also the Governor, who likewise seals it.

Thus it manifestly appears, that there are Two separate Bodies of Men, who, in a Parliamentary way, mature the several Laws which concern the welfare of the Province; and though, perhaps, the mode of doing business may differ in certain circumstantial points from the practice of both Houses of Parliament, yet true it is, that, in substance, the Proceedings are the same; and as all Bills, for the most part, take their rise in the Lower House, the Council, by the Practice which prevails, have a negative in every case, upon the several Acts of the House of Representatives; as *they* would have upon those of the Council, which might originate with them; and as the Governor, in his Executive Situation, *has* both upon Council and Assembly.

This is a Picture not unlike to the British Plan of Government; and the Resemblance is so striking, that men have been led to compare it to that great Model of Perfection—not urged thereto by arrogant Presumption, but excited by the Love and Veneration which they bear to the most glorious Constitution in the World; from an honest pride to claim alliance to *it*; from a firm persuasion of the Blessings flowing from *it*; from a pleasing reflection, that we are the genuine Sons and Daughters of Britain, Descendants

dants from the Loins, and kindred Members of the same State; from a full conviction, that our own Happiness will be best secured by adopting the same Maxims, and embracing the same Laws. Hence it is, that a Governor is said to represent the King; the Council, the House of Lords; and the People's Representatives, the House of Commons of Great Britain. And where is the Arrogance of this innocent and natural Allusion? Every Man of Sense must know, that the Powers and Extent of Jurisdiction belonging to the King, Lords, and Commons, are so immensely great, and so inexpressibly transcendent, that none of the works of Men can be properly compared to this stupendous Machine, so knit and so connected as to animate and sustain a System of its own.

No man of common understanding can draw the comparison, without perceiving most sensibly the immense differences and distinctions that arise upon the comparison; but when we consider ourselves as Members of one great Empire, and that our Colonies have a Legislature of their own to regulate their interior Polity, we are struck with admiration of the British Plan in this little epitome thereof exhibited in ours. We view a Governor, and find, upon examination, that his Power flows from the King; that he represents Him, and exercises certain Acts of inferior Regality, and is possessed of the whole Executive Power of Government in our contracted sphere. We proceed, and find that a Council named by the King, act Legislatively, as a Second or Middle Branch, between the Sovereign and People; and we instantly figure to our minds a House of Lords. We behold a House of Representatives chosen by the People, engaged in framing Laws, laying Taxes, and regulating the Affairs of this
Community,

Community with the concurrence and consent of the other two Branches; and we as readily form an idea of the House of Commons. The Outlines of Government agree in both cases; and I defy any Man to say, They are not substantially the same, so far as local circumstances will admit, and a narrow circle of Duty will allow; and saving also, certain eminent Distinctions which can only belong to the Sovereign State.

Judge BLACKSTONE*, speaking of the Colonies; thus expresses himself: "The Form of Government in most of them is borrowed from that of England; they have a Governor named by the King, or, in some Proprietary Colonies, by the Proprietor, who is his Representative, or Deputy. They have Courts of Justice of their own, from whose Decisions an Appeal lies to the King in Council, here in England. Their General Assembly, which are their House of Commons, together with *their Council of State*, being their *Upper House*, with the concurrence of the King, or his Representative the Governor, make Laws suited to their own Emergencies."

Having, I hope, satisfactorily proved, that the Council of this Colony are a Second or Middle Branch of our Provincial Legislature, and in fact an *Upper House* of Assembly, I propose to answer the several Popular Arguments suggested by a Spirit of Faction in some, and by Ignorance in others.

It is asserted, that the Council cannot be an Upper House of Legislature, in nature of a House of Lords, because they are appointed by the King, may be suspended by the Governor, and are removeable at the King's pleasure; because

* 1. Blackstone, 108.

they are not endued with the same Rights and Privileges as the House of Lords ; and because they are not a permanent Body, and Independent of the Crown. I do not recollect that any thing more has ever been urged against the pretensions of the Council, but what falls under one or other of the points above suggested.

I conceive that the Council being appointed by the King, is an objection both idle and absurd ; because the Hereditary Counsellors of the Kingdom, the House of Lords, (which the pride of our Plebeians will not allow this Body to compare themselves to, even *distantly, restrictively, or metaphorically*) are raised to those dignities by the immediate grace and favour of the Crown. It is the King who places Coronets on the Heads of his Subjects, and at a risk whether they will fit the Heads proposed to wear them ; all Honour flows from thence ; and if the appointment of the King lessens the consequence of One of his humble Council of South Carolina, it must operate equally against Coronets and Mitres. But it is said, that the Council may be suspended, and removed at pleasure. This situation, I must own, is precarious, and liable to great objection : however, when we reflect that it is merely *honorary*, attended with no profit, but much trouble, and more vexation ; when we consider, that scarce an instance can be found of any wanton or arbitrary exclusion, by the King's Governors, of a Member from his Seat in Council, and that the difficulty for the Crown to supply these Vacancies, under the various discouragements which attend the situation, is extremely great ; we shall have reason to conclude, that the Appointment is not altogether as Dependant, as suits some Men to represent. But granting it were as contended for, the power of the Counsellor remains the same ;

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his *Tenure* is precarious, and on that score his Virtue may be put to a severer trial; but still he has a clear Constitution to govern and direct him; and the Argument is no stronger against the Provincial Council, than against Provincial Judges: till very lately, the Judges of England were in little better condition themselves; and yet their Judicial Power was never questioned, or their Authority disputed.

A man may have as good an estate for years, during the term, as another who boasts a Fee Simple; and though the Council have no stated and determined duration, still I do insist, that the Power vested in them is just the same; it may be exercised with as much independance, as by a Peer of the Realm; and though in a more precarious way, and with greater peril to the Party, yet the objection stands good only against the *Tenure*, not against the extent of Power or Jurisdiction.

For my own part, I have ever been indifferent about the Stile and Title of the Council in their Legislative Rank, and have always thought it a matter of small moment, whether they were called, His Majesty's Council, The Council, The Board, or The Upper House. Names may be proper in some cases to signify Things; but Names can never confer Rights, or give a line of Jurisdiction; and therefore I have been satisfied with contemplating, that this Body enjoy Substantial Rights, and by their Negative and Controuling Power, in all Legislative Acts, are to be looked upon as maintaining a due Balance in the Constitution of our Minor State: it is therefore weak, nay, childish, to contend, that they are merely a Privy Council, when the whole Course and Order of the Legislative Proceedings distinguish them as one Superior Branch,

Many people argue, that although Bills are sent to the Council, and Public Business is transacted with them in a Parliamentary way, that still they are only a Council: they admit, indeed, their power to do certain Mechanical Acts, and to give their Concurrence or Dissent; but they flatly disallow them to be an Upper House, or that they are entitled to any of those Parliamentary Rights, Privileges, or Distinctions, which of necessity pertain to the several Branches of the State: they will graciously allow them all the drudgery and toil of a House, with a large portion of scurrility, invective, and abuse; but they cannot condescend to admit, that they enjoy any badges or ensigns of Authority, or that they possess, of right, a co-ercive power to punish in any case whatever.

The Council, considered merely as such, must consent as well as advise; and consequently their judgments are to be informed of every fact necessary for them to know, previous to their giving such consent. Now, if it is acknowledged, that Parliamentary practice is the most eligible mode of doing business, what reason can in justice be assigned, why they should not be allowed to hold a Legislative consequence; in fact, as well for their security, as for maintenance of their dignity; since they formally carry about them every appearance of a Legislature, by concurring in or rejecting, by altering or amending Bills, and by strictly pursuing the several modes of Parliamentary procedure? It seems pretty clear to me, that under these circumstances, it is more for the honour and credit of the Colony, to view the Council as an Upper House, in imitation of a Constitution which every one affects to admire; and nothing can be more absurd or unjust than to suppose, that His Majesty ever meant to im-

pose

pose burthens upon Persons, without intending at the same time to give them all necessary powers for their protection and support. And can any thing be more unreasonable than to contend, that the Members of Assembly, sitting on Legislative business at the West End of a Public Building, have, and enjoy, the Privileges of Members of the House of Commons; and that the Council deliberating on the same Business at the East End of the same House, in the same way, and to the same general end, and in every stage of which Business they have an equal Concurrence, and ultimately an absolute Negative on every Act of the Commons House; and yet *they* shall have no Privileges or Power of an Upper House, or Second Branch of the Legislature, but are to lie open and exposed to every species of insult, without the least shadow of power to punish or correct? The inequality under such a situation is so glaring, that the due equilibrium would be lost, and all Power would center in the House of Representatives.

In the course of my observations, I have been obliged to mention certain Instructions from the King to His Governor, as proofs of His Royal Intention, that the Constitution of the Colony should be assimilated to that of the Mother-Country; and it is my wish that I may be understood to mean that, in general, Instructions are mere Directions for the Governor's Conduct; but sometimes they are in addition to the Commission, and contain a more full explanation of the King's Pleasure, respecting the powers given in, and by, the said Commission, under the Great Seal; and therefore such Instructions may well be argued from, provided they are framed upon the principles of the English Constitution. And this naturally leads me to view the present subject in
another

another light, and I think it must add greatly to strengthen the foregoing reasoning.

I lay it down as an undeniable proposition, That the King can give no other Constitution to His American Colonies, than one resembling that of England; no other plan of Civil Government can be instituted by virtue of any power under the Great Seal of that Kingdom: for when the Subjects of the Parent-State repaired to the Western World, they did not renounce their Connection with it.—The Colonies are not to be considered as conquered Countries, being parts and parcels of the British Empire, and settled by British Subjects; and they are the King's Plantations, but not His Conquests. By the 22^d and 23^d Car. II. c. 26, they are through the whole Act called the King's English Plantations: and in the tenth paragraph 'tis said, "Inasmuch as the Plantations are Inhabited with His Subjects of England."—And so in 15 Car. II. c. 7. s. 5. and 12 Car. II. c. 34. they are called Colonies and Plantations of this Kingdom of England.

No Man will be so hardy as to declare, that when the Subjects repaired to America, they therefore quitted the Laws and Constitution of their Country:—they could not relinquish their Natural Allegiance; and it was not in their power to do the other.—This is a Dominion belonging, not only to the Crown, but to the Realm of England, though not within the Territorial Realm. *Vaughan*, 350, says, that they follow England, and are a part of it.

That Allegiance continues, let the Subject go to the remotest Region of the King's Dominions; every one must readily admit; for which reason, the Laws must govern and protect him †: *unum*

† *Vaugh.* 402:

trahit alterum. Besides, the Great Seal extends to America, and a Writ of Error lies to all subordinate Dominions, of which the Plantations are held to be a part. Now to shew that this intimate Connection, this continuing and subsisting Dependence, were clearly understood about the time of the first Settlements in this Quarter of the World, I cannot omit taking notice, that in the Reign of Charles II. one of the Articles of Impeachment against Lord Chancellor Clarendon was, “*that he had introduced an Arbitrary Government into his Majesty’s Plantations.*”

From these general Observations it seems very evident to me, that the Civil Establishments of this Colony, being made by the King *Jure Coronæ*, must be looked on as Authorities respectively bearing the Image of the like Powers in the Mother Country, and operating in all respects as such, as nearly as the local Condition of a subordinate and dependant Colony can enable them to do.

The Resemblance is still more striking when we take a View of the different Departments. We have Courts of Common Pleas and King’s Bench, of Oyer and Terminer, of Chancery; as also a Court of Admiralty, and Ordinary for Probate of Wills and granting Administrations. We have Circuit Courts, Sheriffs, Coroners, Constables, and Justices of Peace; and these several Jurisdictions subsist by the same Authority, and for the same great ends, as the like Courts in England. Our Laws are principally those of England, in all the great Branches of Liberty, Property, and Personal Security; and the Mode of Practice is the Mode observed in England in all substantial Points. Our Legislature consists of the Governor, who represents the King; and he is Head of the Community. Our Council, consisting

sisting of Twelve Members (for want of a Nobility) form an Upper House; and the Lower House, which answers to the House of Commons, is composed of the Representatives of the People. These Three Bodies do the most important Acts of Legislation: they raise Money, impose Duties, and pass Laws, extending to the Lives, Liberty, and Property of the Subject; and many persons have suffered death by Laws of our Provincial Legislature, before the Royal Assent has been obtained.

By an Act of the Assembly, passed the 12th of December, 1712, entitled, "An Act to put in force in the Province of South Carolina, the several Statutes of the Kingdom of England, or South Britain, therein particularly mentioned; the Acts enumerated are not only declared to be in as full force, as if they had been specially enacted, and made for the said Province," or by any Assembly thereof, but also the Statutes referred to, or explaining such enumerated Statutes, and all the Statutes relating to the Allegiance, or declaring the Rights and Liberties of the Subjects, are made of the same Force.

The several Civil Officers are likewise declared to have the same Power and Authority of the like Officers in England. The Common Law itself is also made of force; and it is ordained, that the Courts of Record shall have the power of the King's and Queen's Court, mentioned in any of the said recited Acts.

This Civil Order of Government is surely a true Copy of our Mother-State, so far as the same can suit our dependant Situation; and what cruel Hand will attempt to spoil a single Feature of the Picture?

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Upon a critical Survey, and nice Comparifon, it muft be owned, that the Piece, though it has merit, is not perfect : but the fame objection will lie, with very great force, againft the Original itfelf ; for, though much has been done to give ftrength and ftability to the Conftitution, much is ftill wanting to fecure it. Every man knows the Faults of the one ; and therefore I fhall briefly hint at the Imperfections of the other—with this humble request, That an Argument on the fcore of a Defect, may have no other byafs than to fhew, that the Copy wants fome correction and amendment. —The grand Flaw in our Civil Eftablifhment is, the Want of that Independance, fo neceffary to preferve the true Political Balance ; but when we regret this Want, let us patiently reflect, whether fuch a State of Independance can properly fubfift, or, in the nature of things, fuit our particular condition. The Governor holds the firft Rank in our Legislature ; and though he represents the King, it will be found impoffible that he can poffefs fo large an Independance ; for he is but a *Delegate*, is only cloathed with certain limited Portions of the Royal Prerogative. His Confeht to Laws is rather provisional, than final ; and, even in his Legislative Station, he is controuled by Inftitutions ; and, therefore, is a two-fold Character, as *Judge and Minifter*.

The uncertain Tenure by which the Council hold their places, points out, likewise, the fame want of Independance ; but is it a found Argument to fay, that becaufe thefe two Bodies differ fo widely, on comparifon, from the King and Houfe of Lords, that, therefore, they are no Branches of our Provincial Legislature ? This, indeed, is not afferted in relation to the Governor ; but it would hold equally ftrong againft him, as againft the Body to whom it is oppofed ; and confequently,

frequently, by proving too much, it actually proves nothing to the purpose. The question, properly put, is not, Whether each Body has as much Power as the like Bodies possess in the Kingdom of England, for this is neither possible, or necessary to our dependant State; but the true question is, Whether they do not respectively act in points of Legislation; and Independently too; of each other; and without one controuling, or unduly influencing the other? And I will be bold to say, They do; for they sit apart; and the Acts of the Council are not considered as the Acts of Individuals, but of the Body at large. The Independance, therefore, is decently enough maintained in a Constitutional View, between the several Powers acting separately within the Jurisdiction of the Colony; and the dependance is, strictly speaking, only as finally resting upon the King himself; or, in other words, both Governor and Council hold their places at the Will of the Crown, and yet, acting distinctly in the Colony, are independent of each other. I lay very little stress upon the circumstance of a Governor having it in his power to Suspend; because this is, in some degree, provided against by his Instructions; and arbitrary removals so seldom occur, that they can scarce be supposed to influence the present subject of dispute.

It is by no means necessary, that our Legislature should enjoy the same Extensive Rights, and Honorable Distinctions, as the Legislature of Great Britain; because we are subordinate to, and dependant upon, the Sovereign State. We move in a narrow Circle, and have little more to do than to take care of our Estates, preserve a decent Police, repair Churches, clear Cuts, make Drains, mend Roads, and Bridges, and Ourselves, which much require it, and to thank God for his Bounty,

ty, and the King for his Protection. And if we will but modestly see what a contracted Scheme this is, compared to the immense objects of a great Commercial Kingdom, having Territories in every Quarter of the Globe, we shall be better satisfied with our Condition, and find less fault with the several Orders of our little State, the importance whereof is proportioned very properly to the small and circumscribed circle, within which we have any part to act.

By this time I hope my Reader is convinced, that our Colony Constitution is borrowed from the English Model; and as all the parts bear so near a resemblance; as the King could give no Civil Government incompatible with, or repugnant to, His own; and as Reason points out, that the respective Branches of our Subordinate State, are intended to act in imitation of those from whom the whole plan is apparently derived; that therefore no exception will be taken to deprive one Body of Men of those Rights, which they ought to hold under the same Authority by which all the other Members of our Civil State hold and enjoy theirs.

Upon the whole of this enquiry, I think it must appear, that His Majesty's Council are a Middle Branch, or rather an Upper House of Legislature of the Colony of South Carolina.

When I seriously reflect, that the nearer we can resemble Ourselves to the Mother-Country, the more Honor will redound; and when I call to mind, that it ought to be our Glory and Ambition to preserve a good Understanding in that Quarter; I am amazed, beyond measure, to find such a spirit of Contradiction, and such untoward Sentiments prevail.

I cannot now entertain a doubt, that the Council are an *Upper House*; I am well convinced they

stand in that relation; and I must say, that the daring denial of this Power is a bold step towards a Dissolution of our Civil Government. It must be confessed, that the House of Assembly have pressed so sorely for many years upon this Second Branch, that it has made many respectable Persons *shy* of accepting what was formerly esteemed a Seat of Honor and Distinction. When the General Opinion proclaims, that a Place in Council is a kind of alienation from the concerns and interest of the People; that the Members are said to possess Rights which every Person in the Community is called upon to question; when they are represented as arrogating to themselves, powers which never were intended to be bestowed upon them, and there is no Tribunal on the Spot to decide the difference; when the part allotted them to act is made a mockery, and the Populace are encouraged to believe, that the Council are *mere Tools* and *Engines* to the Crown, from whom they pretend to derive *Powers*, which are wantonly stiled *Usurpations*; what security can such a Branch of the Legislature have, when they are neither formidable by Numbers, nor important in the course of Jurisdiction?

The Assembly have now declared to the People, that there is no Upper House, and that a Commitment for Contempt by the Council in that character is Illegal, Unconstitutional, and Oppressive; and so I must allow it to be, if they are not a Second Branch of the Colony Legislature. This is a melancholy Judgment, big with danger, and subversive of all Civil Order: The bands of our Society are now loosened, the plan of his Majesty's Government totally disordered, and the Commons are the *vortex* which swallows all the power.

We are surely going back to the unhappy æra of 1648. History informs us of the *Evils* of those days; and we may guess what ill effects will flow, if such doctrines are revived; especially if there is no Middle State to restrain the exorbitancies of Democratical Oppressions. Methinks I see the beautiful copy of our English Constitution much altered and defaced; yea, the *vitals* of our Civil State have received a mortal wound: but my hands are not embued in this cruel murder; and though I behold strong men, like *Sampson* *, taking hold of the middle pillars, over-setting by one bold effort the fabric they support, I will sooner be buried in its ruins, than be a sorrowful spectator of a Faction's Triumph.

If the Council are no Upper House, though they do the business of one, and have no authority to Commit in any case; if they are destitute of every Parliamentary Right and Protection, I see nothing to oppose the Sons of Violence and Disorder from intruding into the Council-chamber, overawing their proceedings, obstructing the Members in their Legislative deliberations, and committing every act of disrespect and insolence; and under all these pungent aggravations, his Majesty's Honourable Council must either submit to the affront, or exert a power which two Justices will under colour of Law evade, and for which the Assembly will bestow their highest commendations. What Man of Spirit and Reputation will condescend to this inhuman treatment? The Subject who owes a duty to the King, likewise owes a duty to himself; and if he neglects to support his own honour and dignity, it is much to be feared he will add little to his station.

* Judges xvi. ver. 29.

Men who seriously contemplate this important subject, and who have no private interest to serve, or favourite passion to indulge, who search for Truth as a *Pearl of great price*, and wish the prosperity of every Member of the Empire, must silently bemoan the unhappy and deranged state of Public Affairs in one of the most flourishing Colonies of North America.

I have briefly sketched out the wide difference between the House of Lords and the Council of our Province, and I have also hinted that our dependant situation makes it neither suitable nor proper that our Privileges should approach a literal comparison with those of the Parent-State; but surely so much power and weight must vest in this Middle Branch, as will answer the ends and purposes of their original institution. Every one admits, that their consent is absolutely necessary to the enacting Laws and Statutes; and it is *this consent* which gives them a Legislative Capacity, and entitles them to such rights and privileges of Parliament as are immediately essential to their existence as one distinct Member of the State. The power of Commitment for Breach of Privilege and Contempt, is that kind of authority which is necessary to their existence as a Body; for without it, every thing they do is a mockery and farce, and they are a mere *Tub* to the Whale, to sport and play with. Judges, Justices, and Courts of Justice, enjoy, and daily exercise this power; and if deprived of it, they could not subsist a moment, or answer the end of their appointments. And if Magistrates, when persons are brought before them by Habeas Corpus, take upon them to discharge Prisoners committed for Contempts, because no Act of Parliament is produced to warrant the Commitments, I am inclined to believe, that the Court which Committed would devise some plan
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of punishment for such an insolent offence. Perhaps some ignorantly suppose, that this power of Commitment, the Privileges of Parliament, and the Right which Courts sometimes practise of giving Protections in certain cases, all spring as concessions from the Crown : but this is not the fact ; for the Prerogative has no such powers to give. Perhaps others believe, that they are derived from some old Statute, deep buried in the Rolls of Parliament. This neither is the case. No ; these powers arise by the necessary operation of Law, as incident to the respective Courts and Offices which exercise the same ; they are entwined, as it were, in the Constitution itself, and are as much a part of the Law of the Land, as Magna Charta, or any other venerable Statute. The King cannot make Law, or create Privilege ; but it is the Constitution itself which conveys peculiar and acknowledged Rights, and Privileges, and Protections, to the Parliament, to certain Officers of Trust, and to the Courts and Ministers of Justice. Their origin, perhaps, cannot be traced to the spring-head, any more than many principles of Law ; but immemorial usage, general consent, and urgent necessity, have given them as deep and good a root, as written Laws or Statutes possibly could do.

The Ninth Article of Rights insisted upon at the time of the Revolution, is, “ That the Freedom of Speech, and Debates or Proceedings in Parliament, ought not to be impeached or questioned in any Court out of Parliament.” Now, comparing our Legislature, for the purposes of our own interior Polity, to the great Original from which the same is evidently copied, it seems unjust to the last degree, that the Proceedings of a Provincial Council should be impeached and questioned, nay over-ruled by Inferior Magistrates ; and

and that persons should be absolutely set at liberty, Committed by them acting legislatively ; and that the Assembly shall also be permitted to interfere, censure the Middle State of the Colony, and give marks of applause to their own Members who presumed to decide so nice a question. And this is the more extraordinary, when it is considered, that the Act of Settlement at the Revolution, gives no new and unknown Rights, but merely declares such as the People then claimed to be their indubitable Rights and Liberties ; and likewise when we farther reflect, that our Patriots are always happy to point at periods which have been so conducive to the establishment of Public Freedom.

No man can give a good reason, why the Assembly should have such Rights, and deny them to the Council ; for they can only claim them as bearing a relation to that Body which enjoy them in England, and the Council can only do the same ; and it cannot admit of doubt, that the power is as necessary and essential to the one Branch, as it is to the other. Perhaps it may be said, that the Council are few in number, and that the power may be abused. To this I can only answer, That Popular Assemblies are most likely to be hurried into acts of precipitation, as well as violence ; and that the objection to Power, merely because the same may be abused, is weak to a degree : and when I assure my Reader, that the Power of Committing has never been exercised by the Council more than twice from the first Settlement of the Colony, no great stress can be laid upon the danger of intrusting the Upper House with such a Power. But to shew my candour, I must frankly own, that this argument is as strong to prove the People very *good*, as to prove the Council either temperate or wise.

The whole scope of the argument against the Council's power as an Upper House is, That they are not as Independant as the People wish, and of course do not possess that degree of Freedom which befits the Legislative Body of a Free Country; that is, the Council are not the Hereditary Counsellors of the King, nor do they possess many of the high privileges which pertain to that illustrious body. They are no Court of Judicature, nor do they try their own Members on life and death; they derive nothing from prescription or time immemorial; and their tenure is at the pleasure of the King, or at the will of a Governor. And because these things are so, shall this Branch have no privilege whatever? Because they are not wholly Independant, are they on that score to be Dependant altogether? Is there no intermediate state between the most extensive and the most limited authority? And because the Council are not a House of Lords, are they destitute of all Legislative Rights? This kind of reasoning is presumptuous to a great degree; because, granting we possessed those ample powers, they must be useless burthens. We have neither Finances to maintain the dignity, or Objects to deserve the splendor; our State is narrow, and our wants are few; we have no prospect beyond the limits of the Colony, and therefore the Nobility would be *idle affectation, foolish pageantry and insensible parade*. But these circumstances by no means exclude such incidental and concomitant powers as are necessary to support a certain degree of dignity and weight suited to our case, and requisite for the maintainance of due order and distinction. When time shall ripen, and make us Independant, we may aspire to *Dukedoms*, and pant for *Lordships*; but at present, we may content ourselves

with the power we *have*, which is nearly equal to the power we really *want*.

I take it for granted, that I have said sufficient to convince my Readers, that the Council are an Upper House, and have a right to Commit for a Breach of Privilege and Contempt; I shall therefore only cite a few Cases to convince them, that a Man cannot be legally discharged by any Power whatever from a Warrant of Commitment by a Legislative Body, during the sitting of both Houses.

In the Case of one Sheridan, who, in 1680, was in custody by Order of the House of Commons, and who applied for a Habeas Corpus, which was denied, the matter was agitated in the House; and one of the soundest Lawyers in those days, Sir *William Jones*, in express terms declared, that the Habeas Corpus Act doth not extend to Commitment by either House of Parliament; that it relates merely to Cases bailable; that Commitments by the House are in the nature of Judgments; and that no Commitment on a Judgment is a bailable Case. This happened about two years after the Habeas Corpus Act passed, which makes it a strong argument in point.

The celebrated Case of the Aylesbury Men has settled this matter beyond a doubt; and the only Case which has occurred since that Determination, is that of the Honourable Alexander Murray, about twenty-two years ago; who being Committed by Order of the House of Commons, and a Habeas Corpus being issued, the cause returned by the Goaler was only an Order of the House of Commons, without *any crime alledged*; and the Judges declared they could not "Question the Authority of that House, or Demand the cause of their Commitment, or Judge the same;" and they remanded the Prisoner: this great point

is therefore clearly settled, and *now* is become the Established Law of the Land.

Some people object, that the Council are a mixed Body, and that it is improper to vest the same persons acting as Advisers to the Governor with the Legislative Powers of an Upper House; but I see no great weight in this Objection; as there is, in fact, no connection between the respective Duties, they being altogether distinct, and seldom bearing the least relation to each other; however, granting that a Case may arise in the Legislature which had been in some degree under the consideration of the Council of State, it cannot be supposed that the Members of the Council will counteract *Legislatively*, what they had before done or advised as a Board of Privy Council, because these different situations create no separate interests, neither do they subject the Members to any *invincible necessity* of acting in a manner contradictory or repugnant to themselves.

This Body, by their very constitution, are intended to maintain a kind of Balance between the Crown and the People; for “the two Houses” “naturally drawing in two directions of opposite interests, and the Prerogative in another, still different from them both, they mutually keep each other from exceeding their proper limits.” The Council are a sort of *Barrier* to withstand the Encroachments of the Lower House; and by the experience of a Century at least, the Institution has been found to answer extremely well the purposes of our Subordinate Jurisdiction. The great mistake in which men find themselves involved upon the subject, is wholly owing to an *Original Error*. We are apt to argue from the situation of a great and mighty Kingdom, without perceiv-

* 1. Blackst. 155.

ing, that *political fitness* and *expediency*, such as are suited to the Rank, the Wants, or Necessities of an Empire, cannot be applied to our *limited condition*. The *fitness* must undergo various changes and modifications; and though we may retain certain features sufficient to preserve a kind of resemblance, and mark our *Filiation*, it is impossible we can literally copy the whole piece.

The Establishment of Provincial Councils in their present form, has till lately given satisfaction both to the Crown and People, and the opposition which has been stirred for several years past, is owing to some Alterations which Time has produced; the most material of which is the encrease of the People's Representatives in General Assembly, whereby the due equipoise is in a great measure lost, and the weight of power centers with the People. *Like causes* will in all Countries produce *like effects*; and whenever that nice æquilibrium which the different Branches of the Constitution are intended to preserve, is lost, by an accession of too much power to either Branch, the one will of course swallow up the other. Thus it happened, the last Century; when the Commons had resolved upon the Downfall of Monarchy, they likewise voted the *House of Lords* to be useless and dangerous.

The Colony suffers in no respect by the twofold character of a Council; but if a Privy Council were to be formed promiscuously from the Members of both Houses, this would weaken the weight of the Crown, and add greatly to the scale of the People, which stands in need of no addition. But, in my apprehension, it seems absolutely necessary that the Numbers of the Council should be encreased; and for this plain and obvious reason, Because a body of Twenty-four Counsellors, for instance, appointed by the King from the First Rank

Rank of the People, most distinguished for their Wealth, Merit, and Ability, would be a means of diffusing a considerable Influence through every Order of Persons in the Community, which must extend very far and wide, by means of their particular connections; whereas a Council of Twelve, several of whom are always absent, can have little weight, nor can their voices be heard amidst the clamour of *prevailing* Numbers.

I think this Body, acting Legislatively, ought to be made independent, by holding that station during the term of their Natural Lives, and determinable only on that event, or on their intire departure from the Province. But the same Person might nevertheless, for proper cause, be displaced from his Seat in Council; which regulation would, in a great measure, operate as a *Check* to an arbitrary Governor, who would be cautious how he raised a powerful Enemy in the Upper House by a rash Removal; at the same time that the power of Removal would keep the Member within proper bounds. The Life-Tenure of his Legislative Capacity would likewise sufficiently secure that *Independency* which is so necessary to this station, and so agreeable to the Constitution of the Parent-State. I know some folks will raise both scruples and fears; but for my own part, I think without much reason; for if we attend to the workings of human nature, we shall find, that a certain degree of Attachment commonly arises to the Fountain from whence an Independent Honor flows. Opposition seldom settles upon the persons who are raised to Dignity by favor of the Crown, it having so much the appearance of Ingratitude, one of the most detested vices; and it ever acts a *faint* and *languid* part, till a Descent or two are past, and the Author of the Elevation is extinct. From this reasoning it seems tolerably clear to me, that
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the Legislator being for life, and deriving his consequence from the Crown, will rather incline to *that scale*; and it is not probable that his opposition could in any instance be *rancorous* or *factionous*, inasmuch as, though his Life-Estate is secure, he would not wish unnecessarily to excite the resentment of the Crown, or exclude his Descendants or Connections, perhaps, from succeeding afterwards to such a Post of Honour and Distinction in their Native Country: in short, this idea seems to admit such a *qualified Dependency*, as will attach the Person to the side of the Crown in that proportion which the Constitution itself allows, and yet so much *real Independency*, as will make him superior to acts of Meanness, Servility, and Oppression. Whether these sentiments are well founded, or not, I submit to the impartial judgment of my Reader; what I principally mean to infer is, that the Happiness of these Colonies much depends upon a due *blending* or *mixture* of Power and Dependence, and in preserving a proper Subordination of Rank and Civil Discipline.

Some few distinctions it might be proper to annex to this situation, as an inducement to Men of Family and Fortune to accept the trust; for, in its present *impotent* state, it is a real burden; and as being overborne by the force of Numbers in the Lower House, is rendered obnoxious to the People, and oppressive to the Party.

These hints I venture to throw out as a kind of temporary or provisional expedients, such as may suit our present state and condition, and in conformity, in some degree, to the original plan sketched out on the First Settlement of our American Colonies. What may be fit and proper for each Province upon a change of the System altogether, and upon a more enlarged and comprehensive plan, I do not presume at present to suggest;

gest; the subjects of this Pamphlet being principally confined to one particular Colony; and therefore an entire new scheme, or plan, upon untried ideas, is rather foreign to my present purpose. When the Colonies have made further advances in Population, Trade, and Science, some other mode of Government may, at a future day, become necessary for the safety and security of the American Dependencies, and for the permanent establishment of British Rule and Sovereignty over these distant and remote Members of the Empire: at present, the old Original *Draught* will probably answer every purpose, with the aid of a few occasional improvements, such as time, and a change of circumstances, naturally suggest, without doing the least degree of violence to the present System. In every human work, we find so much work of the *Moment* prevail when it was first fabricated, that a few years often convince the Original Projectors, how short-sighted and imperfect their ideas were, how unequal to answer any material vicissitudes, or to sustain the weight which it was intended to bear. Daily experience must convince every thoughtful man, that the *political*, as well as the *corporeal* System stands in constant need of correction; that the motions of the one are frequently affected by foreign and accidental causes, as well as the other; that a due and orderly circulation may be wanting in both; that gross humours oftentimes arise, and threaten danger, unless speedily removed and wisely managed; that as excrescences do many times deform and afflict the natural body, so, in like manner, uncommon tumours invade the Body-Politic, and render it diseased and infirm; therefore Art must supply the want of foresight, and such physical skill must be exercised, to remove maladies, and restore to soundness, as the prevailing symptoms may require.

quire. Idle Quackery must be totally avoided ; for no Cure less than *radical*, can be of material moment, whether the machine be *human or political*.

I cannot close this subject without expressing my sincere concern, that such unhappy disputes divide mens minds, and distract the Public Councils of this Country ; and I have presumed to offer these considerations to the world, that the subject may be fully understood, and that the Colony as well as others may judge of it with the greater ease and certainty, by seeing every fact fairly stated and candidly discussed. But I must again repeat, that Twelve Members of the Council bear no kind of proportion to the numbers of the *Lower House*, which consist of Forty-eight Members : and what still adds to the defect is, that as several of the Council are frequently and necessarily absent on their own private concerns, and it often happens, that others are either absent from the Province, or, through sickness, are unable to attend, the Council seldom consist of more than *five* persons ; and commonly only *three* assemble to dispatch the most weighty concerns. This circumstance lessens the real and constitutional dignity which this Body are intended to maintain, and the People cannot be taught to reverence or respect an institution, the Business whereof is transacted, like a Court of Quarter Sessions, by three Justices of Peace ! Hence it is, that the *Middle Branch* is in a manner overwhelmed by the force of numbers in the *Lower House*, and that they fall into Derision and Contempt for the want of *Numbers* in their own. I therefore most ardently wish to see this evil remedied, by such an addition to the number of his Majesty's Council, as that Twelve Members at least may always be assembled on the Business of the State ; then, and not till then, will this middle Branch be able to maintain a proper Balance.

Balance to support their own Constitutional importance, and to withstand the overbearing attempts, and the haughty encroachments of the Lower House.

I sincerely wish the lasting happiness of the Colony of South Carolina ; and I am firmly persuaded, that nothing is so likely to promote it, as a timely and speedy interposition on the part of the Crown, and a decisive settlement of these uneasy contentions upon the sound principles of the English Constitution.

Although it is not the immediate design of the present Publication to consider American Affairs at large, it may possibly be expected, that something should be said concerning the general relation which the Colonists bear to the Mother-Country ; and that having traced the Constitution of the Colonies, and observed upon its resemblance to the British Model, it may not be altogether foreign to offer a few thoughts on their Common Rights, as the remote Children of Great Great Britain.

So much has been said on the right of *Taxation*, and likewise on the idea of *Virtual Representation*, that I forbear to offer one sentiment about them ; and the rather, as I am inwardly persuaded, that the grand security of the Colonists against unreasonable Burthens, Taxes, or Impositions of any kind by the Mother-Country, (granting the Right to do so to be unquestionably clear) consists in this : That the Interests of both Countries are so blended together, and so entirely intermixed, that it is not possible for the Parent-State to oppress her Colonies, without sensibly feeling at the same time, and also partaking of a proportionable share of the evils arising from any false measure whatsoever. Colonization cannot thrive under hardships and discouragements ; and

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when the Colonies begin to languish, Britain may begin to tremble. America therefore has, seriously speaking, nothing to fear; for Interest alone, without the principle of love springing from such a near and dear alliance, will always bring matters right, and prevail against bad policy and evil machinations.

The following ideas form a part of my American Creed: The happiness and prosperity of Great Britain and her Colonies depend *solely*, under God, on a firm and *indissoluble Union*; and therefore every man who wishes well to his Country, ought to lay aside all narrow and contracted notions, and should exert his utmost abilities to remove idle Prejudices, ill-grounded Jealousies, Vulgar Errors, and misconceived ideas; and by resorting to the Principles of our Constitution to rectify Political Mistakes, he will thereby promote the Public Good, and enforce a *uniting, conciliating, and strengthening System*.

The King's regal power is as extensive as his Territory; and as there must be in every State one *supreme Legislative Jurisdiction*, so the same, in like manner, has a right to an occasional exercise thereof, over the most distant and remote Branches of the Empire. And this one over-ruling Power is implied in the nature of things; for there cannot exist, at one and the same time, in the same Empire Two supreme Jurisdictions; because *Equals* can on no score controul *Equals*, and Two supreme Directions imply two distinct and separate States: I therefore hold, that in our Government this One *Supreme Legislature* is the *British Parliament*, which clearly possesses *summum imperium*; whilst our Colonies, at the same time, possess certain Subordinate Powers of Legislation, as essential to *their* Political Existence.

The Colonies are not Conquests, but English Plantations ; they are the Genuine and Legitimate Offspring of Great Britain, and are, beyond all doubt, well entitled to *jus publicum*, and *jus privatum*. That they are part and parcel of the King's Dominion, and were intended to be united thereto as intimately as possible, appears from the spirit and sense of all the Charters, from the express words of the several Acts of Navigation, and from all the Statutes wherein any mention is made of America, from the first foundation and settlement of the Colonies to the present day ; it is therefore idle to question this superintending and over-ruling power of the British Parliament, or its right to extend to these remote Countries, as parcels of one great State, to which they are united. " Truth, as Dr. Cudworth says, is the most unbending and uncompliant, the most necessary, firm, immutable, and adamant thing in the world."

That the Union between the two Countries may be the more compleat, I earnestly wish the Colonists to see *their happiness* in that *very Dependence* on the Mother-Country, which is their best security, both against Foreign and Domestic Foes ; at the same time I as sincerely wish, that the British Rule over these distant and valuable Territories, may always be mild, temperate, and just, and that so much of the English Constitution as can consistently be interwoven into these Subordinate Jurisdictions, may be from time to time added, to complete the Image of that model, which it is intended to represent.

There is not a maxim of Religion, Morals, or Politics, more evident to me than this : That America is a *Hen* that lays her *Golden Eggs* for Britain ; that she must be cherished and supported as part of the great Family of Britain ; then will

her Trade encrease; and in return she must promote and augment her Commercial connection with the Mother-Country, and “† *cling to her like as the vine curls her tendrils, which implies* “*subjection.*”

It is certainly proper that the Colonists, in consideration of protection, should, on their parts, maintain a becoming reverence and esteem for the Supreme Power of that Empire, of which they are Members. Their Allegiance, Honour, Gratitude, Faith, and every thing else are pledged in conscience to the Parent-State; it is their Duty to give strength to the Commonwealth, and to use their Liberty, not as a *Cloak* for Licentiousness, but for the maintainance of Civil Order. They should always remember that Liberty is best supported by a settled plan of Government, and that contumelious treatment of the Mother-Country is at all times a bad lesson to the Members of their own Subordinate State: In short, they should lay aside Jealousies, and nourish a spirit of Trust and Confidence; always keeping in remembrance what a celebrated Writer hath long since said, “§ This is not the Liberty which we can hope, “that no grievance ever should arise in the Commonwealth: That, let no man in this world “expect; but when Complaints are freely heard, “deeply considered, and speedily reformed, then “is the utmost bound of Civil Liberty attained, “that wise men look for.”

† Milton.

§ Ibid.

POSTSCRIPT.

P O S T S C R I P T.

SINCE the foregoing Sheets were finally completed, Mr. Thomas Powel the Printer, (whose Name has been already mentioned, page 33, and who had been so fortunately relieved from his Confinement by Two Magistrates under the Habeas Corpus Act, as before related) attempted by his Attorney, on Tuesday the 18th of September last, (being the Return-day for the Proceſs of the Court of Common Pleas in the Colony of South Carolina) to file a Bill againſt Sir Egerton Leigh, Preſident of the Council, (he being likewise one of the Lawyers of that Court) to answer to the Complaint of the ſaid T. Powel, for Affault and falſe Imprifonment of his Perſon, to his Damage 1900 l. currency; and that Gentleman being preſent when a Motion was made for Leave to file the ſame, he took occaſion to inform the Court, that the Affault and Imprifonment ſtated in the Bill, relate to a Warrant of Commitment ſigned by him at the laſt ſitting of the Legiſlature of this Colony, and by the *exprefs Order of the Upper Houſe of Aſſembly*, for a Breach of Privilege and Contempt committed by the ſaid T. Powel; and therefore he ſubmitted it to the Court, whether it was proper to admit ſuch a Bill to be filed; and he likewise reminded their Honours the Judges of the *9th Article* contained in the *Act of Settlement*, 1 William and Mary, Seſſ. 2. c. 2. of Force in that Colony, “ That
 “ the Freedom of Speech, and Debates or *Proceedings in Parliament*, ought not to be im-
 “ peached or *queſtioned in any Court or place out*
 “ of Parliament.”

The

The Chief Justice declared the Case to be a point of the utmost moment; and as the Bench was thin (only one Assistant Judge being present), the motion for filing the Bill was postponed, and the Attorney accordingly withdrew it for the present.

On the 12th of October (being the first day of Term) the Bill was filed; and on a four-day Rule being served on the Defendant, he made an Affidavit, stating, That the cause of action related solely to matters transacted in the *Upper House of Assembly*, and therefore not cognizable by the Court. On this Affidavit, a Rule was made on the Plaintiff, to shew cause why all Proceedings in this Action should not be stayed; which being Argued on the 16th of October before all the Judges, they were pleased to order the Rule to be made Absolute.

THE Chief Justice entered very copiously into the subject, passed some applicable strictures, and in express and direct terms declared the Council *to be an Upper House of Assembly*; in which his Brethren unanimously concurred. Thus was defeated, one of the boldest attempts against the Constitution of this Country, that Faction and Democratical Insolence could possibly devise; and by the virtue and firmness of the superior Judges, the Wound which the King's Government had suffered has been in part healed, and the Authority of the Middle Branch of the Provincial Legislature is now *legally and judicially* established.

Few cases ever happened before of so uncommon a nature, in any part of his Majesty's Dominions; and I think the World itself, and every Civilized State in it, may be challenged to produce an instance, where any Public Departments have been more cruelly insulted.—Let every private man judge for himself. His Majesty's Honourable

able Council, being the Upper House of Legislature of South Carolina, are first attacked by a publication of their Proceedings without leave of the House; and when the Printer was interrogated, he acknowledged the fact, and refused to give any satisfaction which the Honour even of Private Gentlemen could allow them to accept; and such as he offered, manifested the most daring Disrespect. The House was obliged to Commit Him for a Breach of *Privilege and Contempt*; the effect of which Commitment was afterwards *eluded* by Two Justices of the Peace, and Members of the Lower House, who judicially pronounced the Council *to be no Upper House of Assembly*, and thereupon discharged him.—The Council applied to the Assembly for redress; and in lieu thereof, violent Resolutions were made, declaring the Commitment *unprecedented, unconstitutional, and oppressive*, and a dangerous violation of the Liberty of the Subject. The Thanks of the House were next given to the Two Justices for their *able, upright, and impartial* decision upon the Return of the Habeas Corpus; their reasons given for the discharge of the said T. Powel were declared to be extremely satisfactory to that House; and this approved Judgment was printed at their desire.

The Assembly, to add further to the Insult, addressed the Governor to Suspend those Members who voted the Commitment, and his Majesty is likewise applied to for their Removal.

The Printer being at large, persisted in publishing the Proceedings of the Upper House; and to aggravate the case, *notes* were added, giving the direct *Lie* to the Council, and stating an unfair apology for the Printer's Conduct when called before them: and to sum up all, the same paper acquaints the Public, that “ thus was defeated the most violent attempt that ever had been made in this Province upon the Liberty

“ of

“ of the Subject——probably intended to controul the Liberty of the Press.” In consequence of these inflamed transactions, the Council found themselves divested of all power, reduced to the most abject state of contempt, their Legislative Authority virtually abolished, and the very persons to whom the King himself had entrusted so large a share in the Administration of Public Affairs, shamefully made the sport and derision of every Order of Men in the Community.

The Upper House, clearly perceiving that fresh Commitments would only produce new Insults, as the same or other Justices might be found to discharge the Prisoners upon the like pretences, patiently submitted to this cruel Persecution; and nothing but the most Loyal Affection for the King, a dutiful regard to the Subjects of the Province, and the most sincere attention to his Majesty’s Service, could possibly have prevailed upon the Council to have held their Seats a moment longer; but these disinterested motives, and a full confidence that his Majesty will in due time redress these Grievances, powerfully operated upon their minds, and influenced their conduct.

It is remarkable, that notwithstanding the Two Justices (both Members of Assembly) pronounced so pleasing a Decision, which had the honor to be approved by the Commons House, was celebrated, and in fact warmly adopted by them, and admired as the *Apple of their Eye*; out of Six eminent Gentlemen of the Bar, all Members of the House, not one appeared to promote or to aid *poor Powel’s Suit*. The Assembly gave their Countenance by *Words, Thanks, and Resolutions*; but here they stopped, and the Lawyers seemingly avoided a Piece of Business, which perhaps they appre-

apprehended might be attended with some Risk and Danger; for many will help the Cry, who dare not join the *Chace*. It is likewise very strange, that other eminent Gentlemen, not Members of the House, should appear so shy in a case of this pretended moment and importance; and that the conduct of a suit upon the most favourite Idea of the People's Representatives, should be entrusted to the care of a single person; and the rather, as in Popular Cases the Bar have been known to rise like an armed Man, forming a firm *Phalanx* to resist the force of one Crown-Officer in the Law-Department.

The Two Justices have boldly determined that the Council are *no Upper House*; and the superior Judges have judicially resolved *that they are*; it must therefore follow of course, that the *former* have done wrong in discharging a Prisoner committed by the Upper House; and the Assembly can scarce be right in approving an Act in every sense *illegal*; for I have a clear pretence and a just right to call That *illegal*, which is not consonant to the determinations of the King's superior Judges.—The Magistrates seem to me to be in a very awkward situation; for the empty applause given them by one Branch of the Legislature will not so bolster up the *matter*, as either to indemnify them, or to justify their conduct.

Sir William Williams *, being prosecuted for printing and publishing a seditious Libel reflecting upon the Duke of York, the King's Brother, called *Dangerfield's Narrative*, he pleaded to the jurisdiction of the King's Bench, That he being *Speaker of the House of Commons*, caused the same to be printed by order of the House; to which the Attorney General Demurred; and judgment was

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entered

entered for the King, and Sir William was fined 10,000 l. sterling; and on payment of 8000 l. satisfaction was entered on record: Every order, therefore, of a Legislative Body will not always justify indiscriminately the conduct of those who pay obedience to it; and that Body whose order was insufficient to *justify* when obedience was paid to it, would prove a *broken reed* to rest upon, when approbation only followed an illegal Act, unsupported by any order whatsoever.

I now and then read a little law for my amusement and instruction; and I have a few books which tell me, that a Man may be guilty of a very high offence, by making use of improper pretences to reform Religion, the Laws, or other Grievances, real or *offetted*; and that one may commit high Contempts and Misprisions against the King's Person and Government, by doing any thing that has an *immediate and direct tendency to weaken his Government, or to raise Jealousies between Him and his People.*

Whether the conduct of these Gentlemen exposes them to censure of any kind, I must submit to those Learned in the Laws; for as I know of no Statute which draws a line, or points out precisely the extent of their *Judicial Power*, perhaps they may be allowed to determine (provided a Case leading to it is regularly before them) that an old established plan of Government is worn out, decayed, and prejudicial to the State; that they can give some sound and useful hints for the reparation of certain State Edifices, and substitute something new in the room of old departments. Perhaps it may be perfectly agreeable to their magisterial constitution, to pronounce any branch of Government *useless, unnecessary, or burthensome*, which their own understanding and experience tell them to be so. — The Justices are on Ground

too slippery for me to trace their footsteps farther ; I must therefore retire, and indulge myself with a few serious reflections on the Glorious System of our English Constitution ; and I beg to recommend a piece of advice well expressed by a learned author *, “ Let us keep the balance as even as we can, by forming every estate in the Constitution a controul upon the rest ; but it is extravagant to think of leaving the least strength or temptation to individuals to controul Government itself.”

* Law of Forfeitures, p. 126.

F I N I S.

E R R A T U M.

In p. 33, l. 16, of some Copies, *for* disapprove, *read* disprove.





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